

ENVIRONMENTAL IMPACT ASSESSMENT IN THE NORTH CALOTTE TRANSBOUNDARY AREAS

3rd–4th May 2006 in Rovaniemi, Finland



**Nordkalotträdet
Pohjoiskalotin Neuvosto
The North Calotte Council**

Nordkalotträdet's publikationsserie, rapport nr 69
Pohjoiskalotin neuvoston julkaisusarja, raportti nro 69

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Nordkalottkommittén bytte namn 27.5.1997 till Nordkalotträdet. Publikationer från och med nr 46 har utkommit i Nordkalotträdet's rapportserie.

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Environmental Impact Assessment in the North Calotte Transboundary Areas 3rd–4th May 2006 in Rovaniemi, Finland

*Päivi Lundvall, Dr. ecologist
Lapland Regional Environment Centre
North Calotte Environment Council*

In the North Calotte area fastly growing regional development with increasing industrial, travelling and building interests appear in forms of various projects. The most of the land-use projects have environmental impacts, which on the border areas are except domestic also transboundary.

Already now we have examples large projects on border areas like, connecting cities together, enlargement of steel works, building windmills, building energy nets, planning master and detail plans and developing infrastructure for tourism use. It can easily be estimated that in the near future we will gain experience on the other type of projects also. International mining companies are putting of lots of effort on investigation the northern areas, quite likely new mines will occur on border areas. Even there will be a project of moving a town to facilitate mining under the city. As well the development of tourism business is likely to show new attractive forms. Thus, the number of Environmental Impact Assessment procedures will also increase.

The North Calotte Environment Council's meetings will be held a couple of times yearly. One of the most important issues in the meetings is to check what kind of actions corresponding to environment is going on in each country. Meetings will often end up to discuss on projects with variable environmental effects going on on border areas. We pay our attention on transboundary effects and wondering what conventions and directives has been applied and what should be done. These discussions gave a push for the idea to to organize a North Calotte seminar on EIA-procedures.

It is difficult to measure how to interpret the legislations that in each North Calotte country. Domestic legislation may be quite different and the coordination of provisions will be needed. However, the legitimacy of assessing environmental impacts is powerful today. The concerning international conventions are ratified in each three countries. EU-legislation, basically EIA- and SEA-directives, Habitats and Bird directives, WFD-directive, applies in Sweden and Finland and also in Norway through conventions. The directives are put in force in different ways through national legislation. So what is the problem, our tool box should be in good order.

The lack of information, lack of experience and lack of precedents will create uncertainty among project developers and coordinating, permitting and neighbouring authorities. Hesitancy on how and when to consult and involve authorities and inhabitants in neighbouring countries may occur. We have had some successful Environmental Impact Assessment cases in the Calotte Area, like the Enlargement of Tornio Steel Works. Unfortunately, we have also opposite examples – cases where

environmental impact assessment has not been carried out, even it should have been done. One case is just about to take Finland into European court. I am sure both project developers and authorities will learn on this case.

The aim of this seminar was to gather together actors and stakeholders dealing with environmental impact estimation problems to hear the qualified authorities and researchers about the interpretation of legislation in practice. The environmental authorities described their viewpoints to interpretation and implementation. The seminar brought out applications and implementations of conventions, problems and successes, which have been met in the processes of the environment impact assessment.

The Lapland Regional Environment Centre organised the two-day seminar in May 2006. It was financed by North Calotte Environmental Council. Hopefully, the seminar came nearer to a common view of lines for cooperation between authorities in the North Calotte area with respect to environmental impact assessment. The next approach according to seminar participants, North Calotte Council forthcoming program, the Program North Calotte Council of Ministries will be how to conduct an appropriate impact assessment and how to manage the possible impacts. We must put pressure on adapting ecosystem approach as a tool for both estimation and management. It demands holistic touch, cooperation between experts of ecological, sociological and economical branches of knowledge and delivering the management to local level. Our common aim is sustainable development of North Calotte Area.

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LAPIN
YMPÄRISTÖKESKUS

Environment Impact Assessment in the North Calotte Transboundary Areas

Wednesday 3 May

9.30-10.00 Coffee

Session I: Environment Impact Assessment in the North Calotte

Chairman: Head of Environment Protection Tiina Kämäräinen

- 10.00-10.05 Opening and Welcome / Chief of Environmental protection Tiina Kämäräinen,
Lapland Regional Environment Centre, North Calotte Environmental Council
- 10.05-10.40 Espoo Convention on Transboundary Environment Impact Assessment /
Senior adviser / Seija Rantakallio, Ministry of the Environment
- 10.40-11.15 Environment Impact Assessment in Finland / Senior adviser Seija Rantakallio,
Ministry of the Environment
- 11.15-11.25 Break
- 11.25-12.00 Environment Impact Assessment in Sweden / Inger Alness, The Swedish
Environmental Protection Agency
- 12.00-12.35 Environment Impact Assessment in Norway / Cecilie Haare, Ministry of Norway,
Miljøverndepartementet
- 12.35-13.30 Lunch

Session II: Experiences and Challenges to the Practical Cooperation

Chairman: Director Matti Hepola

- 13.30-14.30 Espoo Convention in the past projects:
 - Dredging of the fairway in Tornio / Rantakallio & Alness
 - Expansion of Outokumpu steelworks / Rantakallio & Alness
- 14.30-15.00 New projects:
 - Nellim-Pasvik -Road project / Senior supervisor Leena Ruokanen, Lapland
Regional Environment Centre
- 15.00-15.30 Break and coffee
- 15.30-16.00 Land-use Plan of Tenojoki and Utsjoki-river / Architect Tarja Outila, Lapland
Regional Environment Centre
- 16.00-16.30 Co-operation between Norway and Finland in master plan process of Utsjoki munici-
pality
 - Local administration and local master planning in Municipality of Tana and along
Tenojoki river/ Svein-Ottar Helander, Tana, Norway
 - Discussion and EIA experiences in transboundary land-use planning
- 19.00---> Dinner

Thursday 4 May

Session III: From Research to Implementation

Chairman: Senior supervisor Leena Ruokanen

- 9.30-10.15 Transboundary EIA in the North Calotte from the Perspective of International Law and European Law / Director Timo Koivurova, Northern Institute for Environmental and Minority Law, Arctic Centre
- 10.15-10.45 Natura Assessment with relation to EIA / Senior Researcher Tarja Söderman, Finnish Environment Institute
- 10.45-11.00 Break
- 11.00-11.30 Environment Impact Assessment of Official Plans and Programmes in the Transboundary Areas / Senior Researcher Tarja Söderman, Finnish Environment Institute
- 11.30-12.00 Perspective of the Permit Authority / Director Matti Hepola, Northern Finland Environmental Permit Authority
- 12.00-12.15 Final discussion
- 12.15-13.15 Lunch

Session I:
Environment Impact Assessment in the North Calotte

Espoo Convention

Convention on Environmental Impact Assessment in a Transboundary Context

*Senior adviser Seija Rantakallio
Ministry of the Environment*

Aim of the Convention

- Prevent, reduce and control significant adverse transboundary environmental impact of projects
 - establish EIA procedure for the projects defined by the Convention. It must include:
 - public participation
 - EIA documentation
- Give possibility to participate in the other country's EIA procedure

Espoo 1

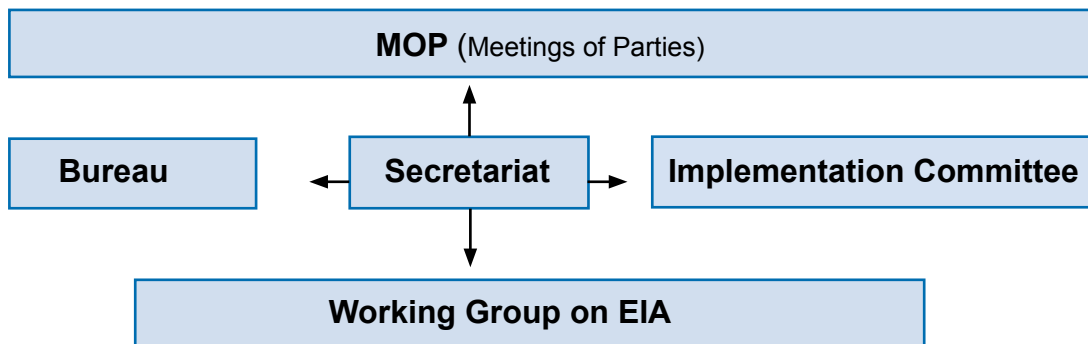
- Convention under United Nation's Economic Commission for Europe
- Signed at Espoo, Finland 1991
- Became into force 1997
- Ratifications:
 - Sweden 1992
 - Norge 1993
 - Finland 1995
- Implementation through national legislation

Espoo 2

Convention has

- secretariat in Geneva
- 41 contracting Parties at the moment
- had three Meetings of Parties, 4th MOP will be held in Bukarest in May 2008
- MOP the highest decision making body
- MOP selects officers, approves work plan and budget for next working period
- Yearly meetings of Working Group on EIA

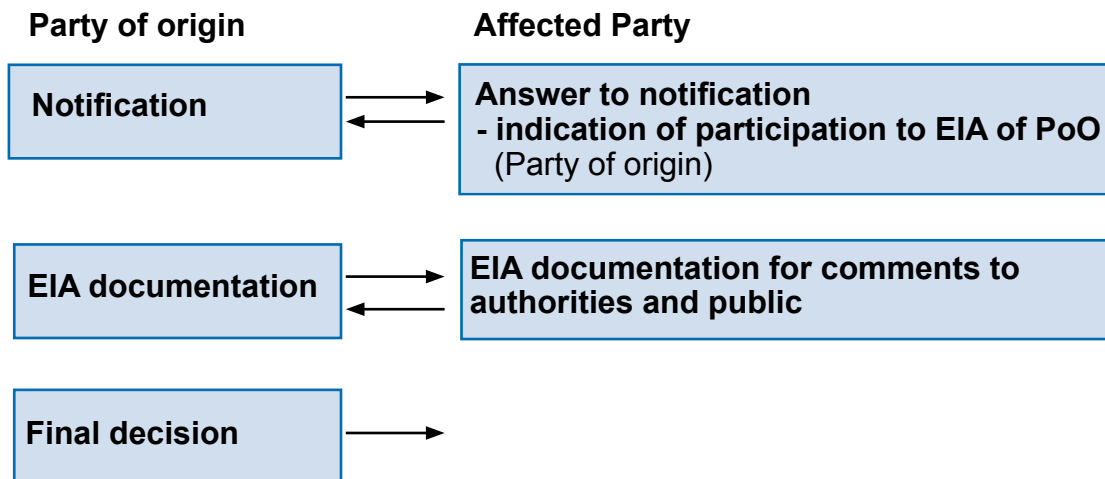
Espoo 3



Application of the convention

- Convention is applied to projects with significant adverse transboundary environmental impact
- projects are listed in the Convention, appendix 1
- any other project with above mentioned impacts if Parties so decide

Steps of the international EIA



Notification

- **Notification**
- Party of origin sends to affected Party
- Contains above all info about the project and its transboundary impact, in Finland also the scoping document is included
- Affected Party shall indicate whether it intends to participate in the EIA within given timeframe
- Exchange of information about affected environment

Public participation

- Strong provisions that countries must ensure together that public of the affected country is informed and has a possibility to make comments on the project
- Equivalent opportunity for public to participate on both sides of the border

EIA documentation

- EIA documentation is sent for comments to the affected Party's authorities and public
- Consultations take place on
 - alternatives, mitigation measures and monitoring
 - other forms of mutual assistance to reduce impacts
 - any other matters relating to the project

Final decisions

- In the final decision, due account must be taken of the outcome of EIA and consultations
- Affected Party is provided with final decision with reasons and considerations on which it was based
- If such additional info about transboundary impact becomes available before work commences, that would have affected the decision, the Parties shall inform each other. If needed, consultation shall be held whether the decision needs to be revised.

Post-project analysis, PPA

- Upon request must Parties decide if PPA shall be carried out and determine its scope
 - Monitoring compliance with the conditions and mitigation measures in the final decision
 - Reviewing impacts
 - Verification of past predictions to transfer experience to future activities

Environmental Impact Assessment in Finland

*Senior adviser Seija Rantakallio
Ministry of the Environment*

- EIA act 1994
- EIA decree 1994, 1999
- EIA directive 1985 (amendments 1997, 2003)
- UN/ECE Convention on EIA in a Transboundary Context 1991

Finnish EIA

- assessment of environmental impacts
- alternatives for implementing the project (with 0-alternative = do-nothing)
- public participation
- as early as possible
- mitigation measures
- proposal for monitoring programme

Scope of EIA application

- List of projects
 - EIA decree, section 6
 - specific thresholds
- Individual cases
 - EIA act, section 4.2
 - any other project with significant adverse environmental impact
 - decision by Ministry of the Environment
 - (Ministry of Trade and Industry in nuclear energy projects)

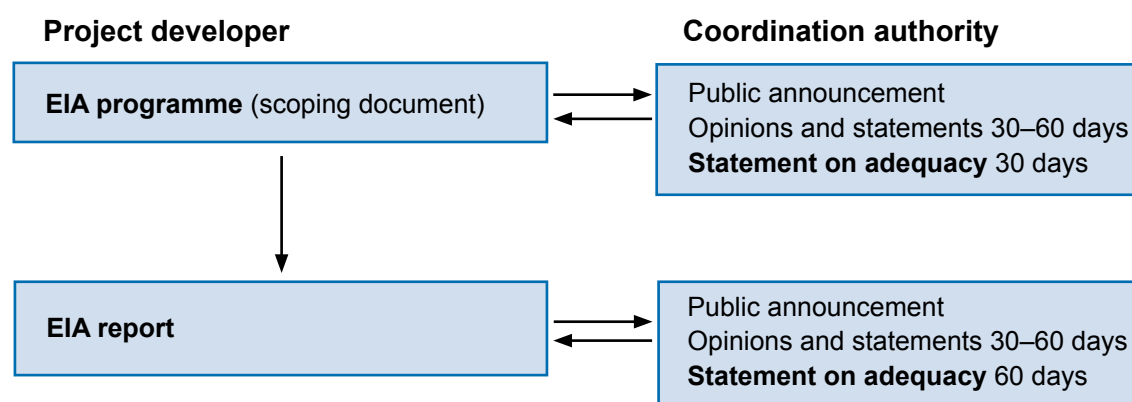
List of Projects

- Detailed list in the fields of
 1. Animal husbandry (poultry houses and piggeries)
 2. Extraction and processing of natural resources
 3. Hydraulic engineering and regulation of waterflow
 4. Metal industry
 5. Forest industry
 6. Chemical industry, mineral products manufacturing
 7. Energy production
 8. Transmission and storage of energy and materials
 9. Transport
 10. Water management
 11. Waste management

Environmental impact

- Direct and indirect effects on
 1. Human health, living conditions and amenity
 2. Soil, water, air, climate, organisms and biological diversity
 3. Community structure, buildings, landscape, townscape and cultural heritage
 4. Utilization of natural resources
 5. Interaction between the factors in 1–4

EIA procedure



Functions of the coordinating authority

- relevant regional environment centre (13 centres)
- Ministry of Trade and Industry in nuclear energy projects
- coordinate EIA procedure
- see to public announcements and hearings and arrange the necessary public hearings
- check the quality of the EIA programme and the EIA report and provide a statement on them

EIAs in Finland

- > 270 EIAs performed since 1994
- approx. 25–30 EIAs per year
- most frequent
 - waste management projects
 - road projects
 - peat production projects

EIA legislation in Sweden

Inger Alness

Swedish Environmental Protection Agency

General legislation on EIA/SEA

The Environmental Code

Chapter 6: Environmental Impact Assessment

Regulation on Environmental Impact Assessment

- Projects (EIA)
- Plans and programmes (SEA)

EIA and permit

EIA procedure is integrated with the permitting procedure.

- An EIA shall be submitted with an application for a permit

When is an EIA required?

If an activity or measure is likely to have a significant impact on the environment it shall be subject to an **environment impact assessment**

- Mandatory EIA: Annex 1 to Regulation on EIA
- EIA: Information to the extent necessary

Contents of EIA

- Description of the activity and its *location, design and scope*
- How to *avoid, mitigate or remedy* adverse effects
- Information on how to *establish and assess the main impacts* on health, the environment etc.
- Description of possible *alternative sites and designs*. Statement on why an alternative was chosen
- A non-technical summary

Consultation who

- The County Administration Board
- Government agencies, municipalities, citizens and organisations likely to be affected
- Countries which are likely to be exposed to a significant environmental impact

Consultation when

- During the preparation of application & EIA
- When application & EIA has been submitted to the permitting authority
- No rules for time-limits

SEA and planning

SEA should be carried out

- Likely to effect a Nature 2000 site
- Sets framework for future development consents for projects on Annex 1 or 3 to the regulation on EIA and is
 - comprehensive plan
 - municipal energy plan
 - municipal waste management plan
 - other plan regulating

Experience and guidance

National Board of Housing, Building and Planning

- Guidance for SEA in plans regulated in the Planning and Building Law

Swedish Environmental Protection Agency

- General guidance on EIA and SEA

Consultation with other countries

The Swedish Environmental Protection Agency has been designated to fulfil the obligations regarding the transboundary consultations

- EIA
- SEA

The Norwegian regulations on impact assessment

Cecilie Haare

The Norwegian Ministry of the Environment

Department for regional planning, Unit for impact assessments

What characterises the Norwegian borders?



International instruments

- The Espoo Convention
- The Kiev Protocol
- EU directives
- The Nordic Convention on the Environment (1974)

Norway as part of origin

- Plans and projects which might have transboundary effects: Appendix I and art. 2.5 of the Espoo Convention
- Coordinate the different procedures as early as possible
- Coordinate timing of public participation
- Equal treatment of the statements and time limits – 6 weeks
- The Ministry of the Environment to receive copy of letter

Norway as an affected party

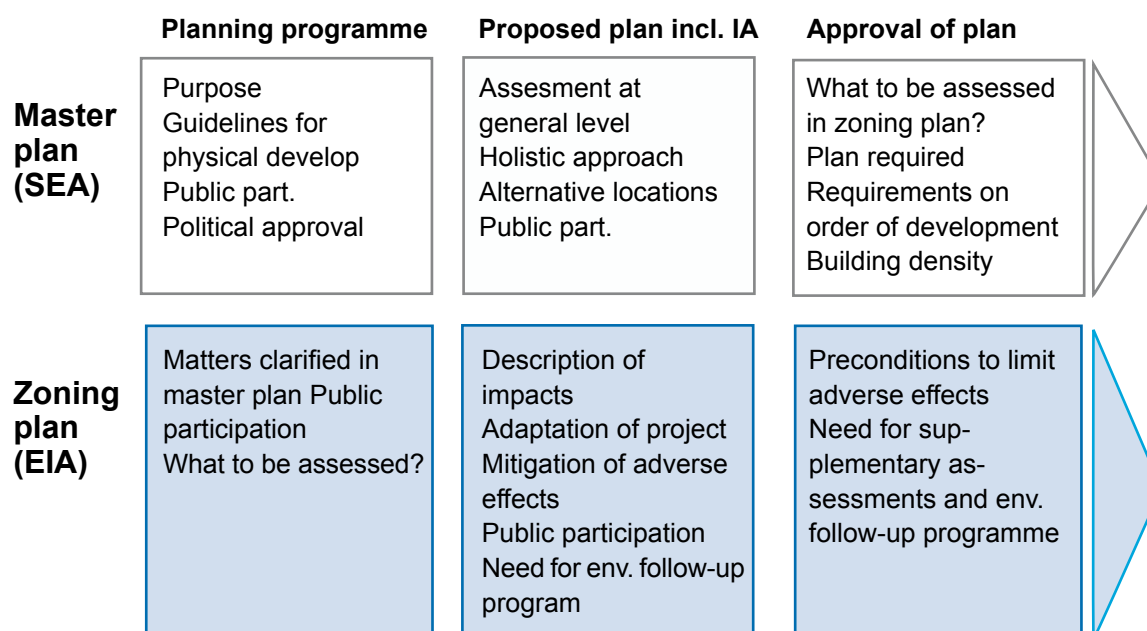
- The Ministry of the Environment (MoE) shall be informed ("focal point")
- MoE makes sure that information is known to Norwegian authorities and interests
- Communication between concerned authorities – MoE to be copied

What characterises the Norwegian regulations on impact assessment?

- The planning programme
- Impact assessment (IA) for plans that may have significant effects on the environment, natural resources or community
- IA is an integrated part of the planning process
- The municipality is the competent authority – also regarding IA for projects

The process (regarding transboundary cases)

- Activity within scope of regulations?
The proposer
- Prepare a proposed planning programme
The proposer
- Public participation
- Proposed plan or application with an environmental impact assessment
- Public participation
- Planning decision. The planning or licensing authority. Take into account the IA and the comments thereon



Scope of the regulations

Plans and projects

- Assessment compulsory, Appendix I-list
- Subject to assessment if causing significant effects

Plans that shall always be dealt with in accordance with the regulations

- **County master plans** with guidelines for physical development
- **The land-use part of the municipal master plan**
- **Municipal sub-plans** with specify areas for physical development
- **Zoning plans** or building development plans for projects listed in Appendix I

Impact assessment if meeting certain criteria

- Plans or projects that may have significant effects on the environment, natural resources or community
- Competent authority to decide on the use of the regulations
- Includes natural environment, cultural heritage and pollution, and increased focus on community:
 - Sami interests
 - The population's health
 - Accidents and emergency preparedness
 - Accessibility

Sami interests

- Plans and projects shall undergo an impact assessment if they
 - May conflict with the pursuit of Sami commercial activities in uncultivated areas or are located in areas of special value for reindeer husbandry or limited seasonal pasture and may conflict with reindeer husbandry interests or may in other ways conflict with the land use needs of reindeer husbandry

The Appendix I list of projects

- Goes further than our international obligations
- For instance the following projects will always be assessed:
 - Hydro power plants with an installed effect exceeding 10 MW
 - Golf courses with 18 or more holes
 - Facilities for treatment of household and commercial waste

Future perspectives

- Increased amount of transboundary activities
- Topical areas of the community:
 - Energy: Oil and LNG
 - Transport
 - Tourism
 - Circumpolar cooperation
 - Sami interests
- Guidelines for impact assessments in the Arctic

IAIA'06

- **Conference 23–26 May in Stavanger, Norge**
- Main theme: Power, poverty and sustainability. The role of impact assessments
- Nordic day
- Circumpolar day
- Land-use planning
- Indigenous people
- 700 participants, 92 countries

Session II:
Experiences and Challenges to the Practical Cooperation

Practical application of Espoo Convention in Finland

Tornio Stainless Steel works

Tornio fairway

Senior adviser Seija Rantakallio
Ministry of the Environment

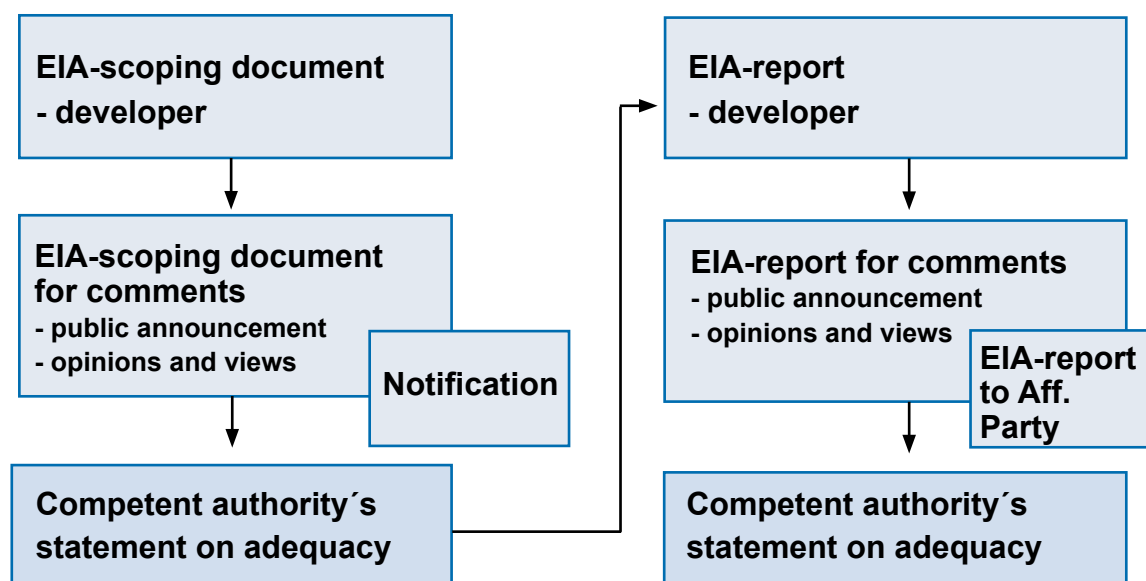
Enlargement of Tornio Stainless Steel works

- located in Tornio, at the northern end of Gulf of Bothnia and at the mouth of river Tornionjoki
- production of ferrochrome from 1968 and steel from 1976
- previous EIA and Espoo case 1996-97

Enlargement of Tornio Stainless Steel works

- Project included many activities, f.ex.:
 - increase of capacity
 - enlargement of harbour
 - sulphuric acid installation
 - recycling installation for metal dust
- EIA-project according to Finnish legislation
- Espoo: enlargement could cause transboundary impact (4), chemical installation (6), wastedisposal installation of dangerous wastes (10); 2 km distance to Sweden

Finnish EIA procedure and Espoo



Espoo procedure in Tornio 1

- EIA-scoping document, partly translated
- MoE (PoC) informs Swedish PoC and agrees on practicalities
- MoE sends notification with information on EIA and proposed activity
- MoE receives an answer from Sweden with comments to scoping document
- MoE transmits the information to Laplans regional env. centre, which takes the comments into account in its statement to the developer
- MoE sent translated competent authority's statement to Sweden

Espoo procedure in Tornio 2

- partly translated EIA-report to Sweden
- Sweden not content, translated information does not include all info stated in earlier stage
- additions are provided
- MoE received comments from Sweden to EIA-report and transmitted it to Lapland regional env. centre
- MoE sent translated competent authority's statement to Sweden

Tornio fairway

- located at the northern end of Gulf of Bothnia
- the fairway leads to Röyttä harbour, mainly servicing harbour for Steel works
- depth 8 m → dredging to 9 m, 770 000 m³
- length 25 km
- fairway partly on Swedish side
- EIA: MoE decision, case by case examination
- Espoo: strong emphasis on Sweden's request
 - consultation with Sweden in connection with MoE decision on EIA

Public involvement in Tornio projects

- public had same time period to give comments to documents
- Steel works
 - combined public information meeting for Sweden and Finland with interpretation
 - developer arranged a meeting for media
- Tornio fairway
 - public information meetings separately in Sweden and Finland

Cooperation with authorities in Tornio projects

- Steering group
- Follow-up group
 - relevant authorities from both sides of the border, f.ex
 - Lapland reg. environment centre
 - Swedish provincial env. admin.
 - towns of Tornio (Finland) and Haaparanta (Sweden)
 - Swedish fisheries admin. and fishermen's associations from Sweden and Finland (fairway)

Conclusions

- procedure should be well planned, time starts ticking when mailbox bangs
- responsibilities should be clear
 - written guidance
- meeting with points of contacts occasionally to agree on practicalities and to improve procedure

Tornio Stainless Steel works and Tornio fairway – Two examples

Inger Alness

Swedish Environmental Protection Agency

Example I:

Espoo-procedure in Tornio Stainless Steel works

- First contact: April 2004
- Notification by e-mail: 27 May 2004
- Notification and documents: 1 June 2004
- Documents sent for comments: 2 June 2004
- Pressrelease: 4 June 2004
- Comments to Finland: 21 July 2004
- EIA for comment: 18 February 2005, lack of translation
- Documents sent for comments: 15 March 2005
- Additional translation from Finland, sent for comments 22 April 2005
- Comments to Finland: 31 May 2005

Swedish involvement

Documents available at:

- Swedish Environmental Protection Agency
- County Administrative Board in Luleå
- Local Authority in Haparanda

Documents sent to:

- The Swedish National Board of Fisheries (regional)
- Swedish Maritime Administration (regional)
- Swedish Rescue Services Agency
- The Swedish Society for Nature Conservation

Example II:

Espoo-procedure in Tornio fairway

- First contact: February 2004
- Information exchange
- Formal request from Sweden on EIA: June 2004
- Notification and documents: 10 October 2004
- Advertisement in newspapers in Norrbotten: 7 October 2004
- Pressrelease: 8 October 2004
- Documents sent for comments: 12 October 2004
- Comments to Finland: 9 November 2004
- EIA for comment: 11 February 2005
- Documents sent for comments: 18 February 2005
- Comments to Finland: March 2005

Swedish involvement

Documents available at:

- Swedish Environmental Protection Agency
- County Administrative Board in Luleå
- Local Authority in Haparanda

Documents sent to:

- The Swedish National Board of Fisheries (regional)
- Swedish Maritime Administration (regional)
- Swedish Rescue Services Agency
- The Swedish Society for Nature Conservation.

Permitting processes

- The fairway needs permits under the Finnish – Swedish Border River Commission and the Northern Finland Environmental Permit Authority
- Sweden is a part of the Border River Commission and can according to the Nordic Environmental Convention take part in the permitting process under the Northern Finland Environmental Permit Authority

Procedure for the Nordic Environmental Convention in Tornio fairway

Swedish Environmental Protection Agency has special responsibilities to coordinate the involvement according to the Nordic Environmental Convention

- Application for comments from the Northern Finland Environmental Permit Authority: 19 July 2005
- Sent for comments: 3 August 2005
- Comments to the Northern Finland Environmental Permit Authority : 22 September 2005
- Decision from the Northern Finland Environmental Permit Authority: 25 November 2005

Swedish involvement

Documents available at:

- Swedish Environmental Protection Agency
- County Administrative Board in Luleå
- Local Authority in Haparanda

Comments from:

- The Swedish National Board of Fisheries (regional)
- County Administrative Board in Luleå
- Local Organisation in Vuona (byalag)

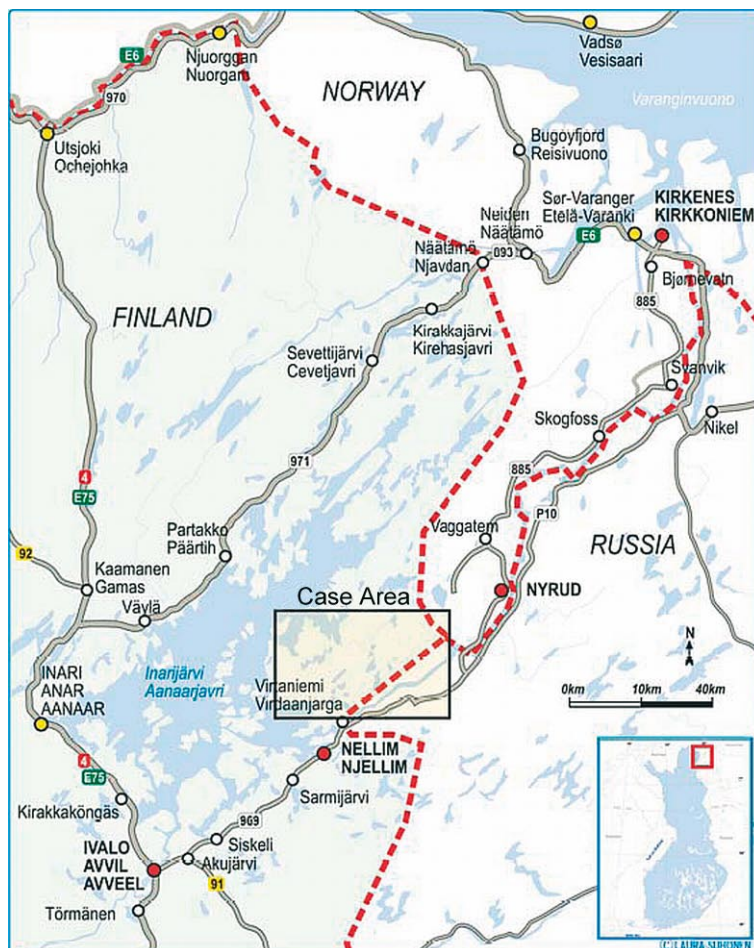
Observations and Conclusions

- Exchange of information on all stages is essential
- Informal contacts facilitates the keeping of timetable
- Important with enough translation in time

Road Connection between Norway and Finland: NELLIM–PASVIK

Senior supervisor Leena Ruokanen
Lapland Regional Environment Centre

Pictures from: <http://www.inari.fi/tieyhteys>, see also other pictures



Background

- The road connection between Finland and Norway was cut off at the end of World War Two due to the loss of the Petsamo region.
- Immediately after the war, an attempt was made to build a road connection via Jäniskoski.
- In the 1950s, a project known as the Lake Elletjärvi road plan could not be carried out, due to economic difficulties.
- The matter of a road connection between Finland and Norway was taken up in the Nordic Council in 1969 and 1985.
- The Lake Sevettijärvi road was improved from the 1970s to the 1990s
- A Norwegian-Finnish feasibility study in 1991 indicated that the new road connection would involve high construction costs and bring only low added value in a computerized society.

- The Municipality of Inari ordered a study in 2004–2005, financed by Interreg III A, that comprised a road connection study as well as studies of nature, tourism and reindeer husbandry in the area.
- The Finnish Road Administration (Lappi Region) began preliminary engineering in Finland in 2005.

Project plan

- Aim: a road connection from the south shore of Lake Inarijärvi in Finland (Nellim) to the village of Nyrud in Norway
- The length of the proposed connection is about 30 km (from the River Paatsjoki (Nellim) to the Finnish/Norwegian border).
- The public road ends after the bridge over the River Paatsjoki; a forest road continues for about another 18 km.
- The completely roadless area to the Norwegian border is about 13 km
- The project is part of a plan for a 204 km-long road connecting Ivalo and Kirkkoniemi. The length of the existing public road is about 150 km.
- The new road would be 7 metres wide and would initially have a gravel surface.
- The design speed would be 80 km/h, with speed limits of 50–60 km/h on shorter sections where necessary.
- The road would make it possible to drive around Lake Inarijärvi.

Effect of the new road connection on driving distances and driving times, when average speed is 75 km/h

From	To	Present distance (km)	New distance (km)	Distance saving (km)	Time saving (h)
Nyrud	Nellim	371	63	308	4
Nyrud	Ivalo	329	105	224	3
Kirkkoniemi	Nellim	281	165	116	1.5
Kirkkoniemi	Ivalo	239	207	32	< 0.5

Results of the road connection study

- The new road connection would affect the entire economy of northeastern Lapland, in particular through increased tourism. The road would make possible a new international route crossing the Nordic countries.
- The road is expected to bring new travellers, enlivening the village of Nellim, which at present is peripheral in terms of road connections. The road would improve developmental opportunities for village residents and businesses.
- The new road connection would have positive effects on the further development of northern Lapland, the North Calotte and the Barents Region.

- The road would improve international traffic connections and other infrastructure and would strengthen co-operation between the countries.
- It would improve operating conditions for tourism and other sectors of economic life.
- It would contribute to keeping the area populated, to the development of local livelihoods and to employment.
- It would alleviate the peripheral position of the Paatsjoki Valley (Paatsjokilaakso).
- It would shorten driving distances and times.
- It would promote cultural co-operation and foster cultural heritage by enabling more efficient international co-operation.
- It would make possible freer and more rapid travel from one destination to another, improve access to destinations and develop new routes to the North Calotte area.

The situation in Norway

- Due to national protection interests in Pasvik, the Norwegian Ministry of the Environment has decided that the Directorate of Public Roads (*Vegdirektoratet*) will be the co-ordinating authority (*ansvarlig myndighet*) for the project's environmental impact assessment (EIA) procedure.
- The Municipality of Sør-Varanger will pay for the studies required by the EIA and be the developer.
- The Norwegian Public Roads Administration (northern region) will be responsible for carrying out the studies and be the project owner (*tiltakshaver*).
- The Norwegian Public Roads Administration has proposed that an assessment programme be carried out in co-operation with the Municipality of Sør-Varanger.
- The public has been informed about the assessment programme in Norway.

Need for an environmental impact assessment procedure in Finland

- On 29 September 2005, the Finnish Road Administration (Lappi Region) asked the Lapland Regional Environment Centre about the need for an EIA procedure.
- In January 2006, the Norwegian Ministry of the Environment asked the Finnish Ministry of the Environment whether the Espoo Convention should be applied in the project.
- On 19 April 2006, the Lapland Regional Environment Centre made a submission to the Ministry of the Environment regarding the need for an EIA.
- The Finnish Ministry of the Environment decided June 27, 2006 that **The EIA is needed**.

Reasons for the submission of the Lapland regional environment centre

- The assessment procedure shall also be applied in individual cases to a project that will probably have significant adverse environmental impact comparable in type and extent to that of the projects referred to in [the list of projects in the EIA Decree], also taking into account the combined impact of different projects. (EIA Act, section 4)
- The character and location of the project and the nature of its impacts shall be taken into account. (EIA Decree, section 7)

Reasons for the submission (continued)

- Neither the size of the project nor other factors are likely to cause significant adverse environmental impacts, and the size of nearby population is small.
- At present, land use in the area is typically very limited and is nature oriented.

- The road connection would come into the wilderness and nature conservation areas established in the vicinity.
- Regeneration of nature in the area is poor.
- The indirect effects of the project may cause adverse significant environmental impacts in type and extent.

Reasons for the submission (continued)

- Taking into account the transboundary environmental impacts and the entire project, e.g., the length of the road, the project is considered to have significant adverse environmental impacts as referred to in the list of projects in the EIA Decree.
- The project would permanently change the character of the area.
- The project would create a new international road connection.

Comment of the Lapland regional environment centre on applying the Espoo convention

- The environmental impact assessment of the project should be arranged in co-operation with Norway.
- It is not possible to replace the transboundary environmental impact assessment procedure as set out in the EIA Act with impact studies and hearings conducted as part of other procedures (EIA Act, section 5).

Actors in Finland

- The Finnish Road Administration is the developer.
- The Lapland Regional Environment Centre is the co-ordinating authority.
- The Ministry of the Environment
 - will report to Norway on the EIA procedure.
 - will report to Norway on the possibility of its taking part in the EIA procedure.

Co-ordination between the EIA procedures

- The project will be a joint project, because it is being carried out on both sides of the border.
- The most important thing is to treat the project as a whole regardless of which side of the border the impacts occur on.
- The EIA procedures should progress simultaneously.
- The environmental impact assessment programme of each party must set out how the participation of the other will be implemented.
- There cannot be a single, common document. Each party is to act in accordance with its respective legislation.

Co-ordination between the EIA procedures

- The effects of the overall project have to be taken into account on both sides of the border.
- EIA-related announcements are to be published in both countries.
- Each country is to arrange opportunities for the other to participate in the EIA procedure, i.e., to familiarize itself with the documents, express its opinions, issue statements, and take part in hearings and other meetings (with this to include the opportunity to provide statements on the entire project).

Local master plans of Tenojoki-river and Utsjoki-river

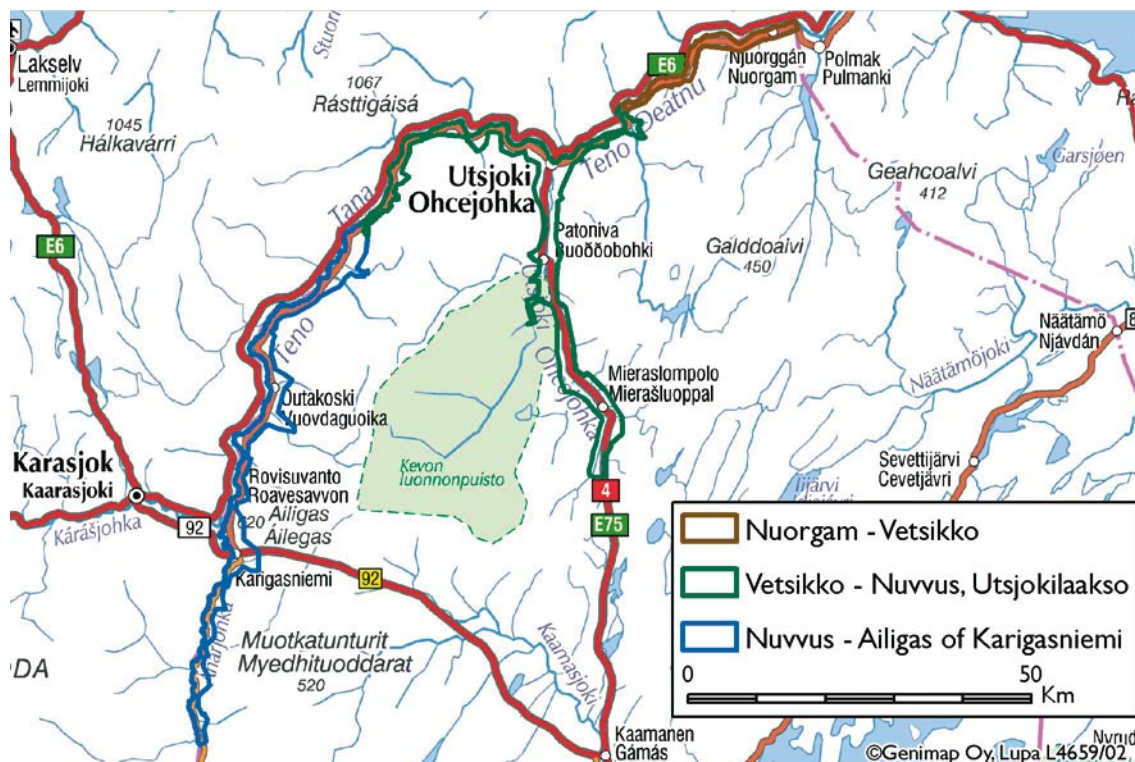
DrTech, architect Tarja Outila
Lapland Regional Environmental Centre

Implementing the Act concerning the assessment of the effects of certain plans and programmes on the environment (in Finnish SOVA-A ct)- in land use planning

Parts of the project:

1. Sami Museum Siida: invention of sami-culture
2. MBA: archeological survey
3. Maa ja Vesi: local master planning
 - Report of basic facts
 - Development plan
 - Three subareas: local master plan for each subarea affording the possibilities to grant building permits

Target area/ three subareas



Project schedule and implementation of SOVA-act

- Directive (Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment) shall be implemented in EU- countries before 21.7.2004
- Environmental impact assessment in land use plans is based on Land use and building Act (LBA): section 199 of the Land use and Building Act and section 99 of the Land use and building Decree (LBD)

Project schedule and implementation of SOVA-act

- According to transitional provisions section 199 of LBA shall be implemented in a planning project according to the provisions concerning the directive coming into force
- The directive must be implemented if the initiation of planning has been publicized according to the section 63 of LBA after 21.7.2004

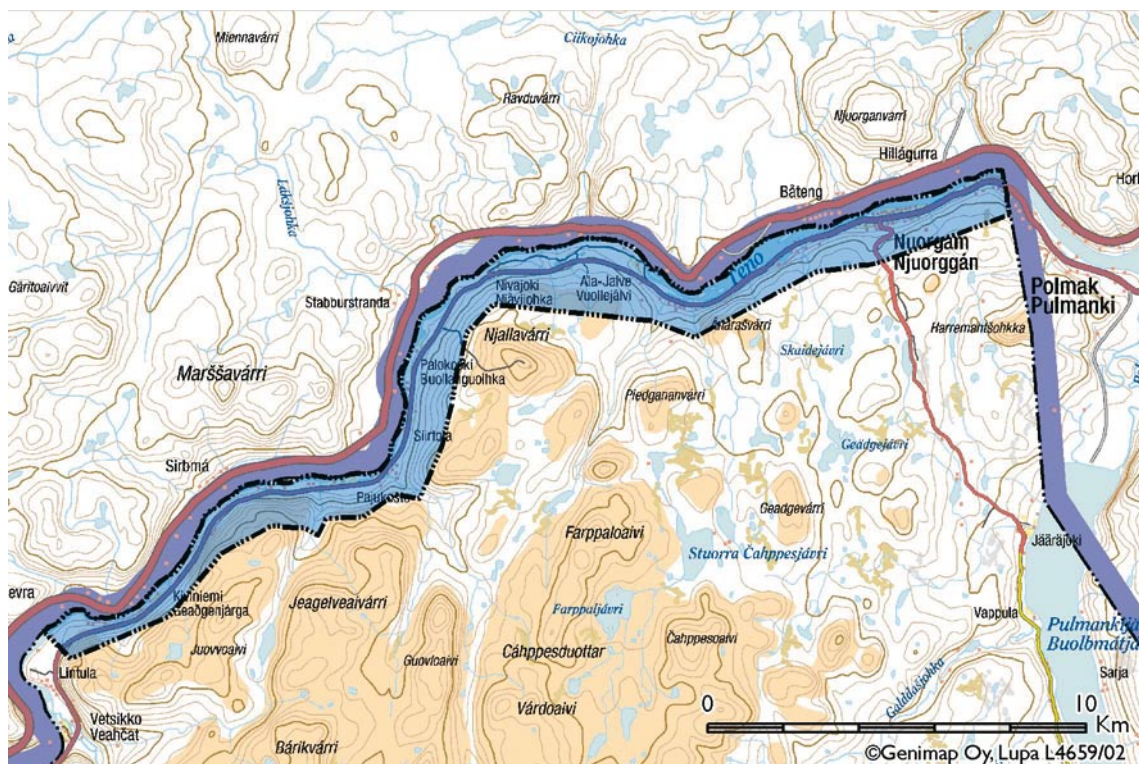
Project schedule and implementation of SOVA-act

- The directive must be implemented if the initiation of planning has been publicized after 21.7.2004, and if the plan should be approved later than 21.7.2006
- Precondition for the implementation is that the authority responsible for the plan, for well-grounded reasons regards that environmental impact assessment is not possible to make

Implementation in the project

- The initiation of the whole project has been publicized 27.10.2003-25.11.2003
- Negotiation between authorities was held 5.9.2003 (Regional authorities of Lapland and Finnmark were involved)
- In participation and assessment scheme the progress of the whole project is described, thus the initiation does not concern any individual general master plan according to section 63 of LBA

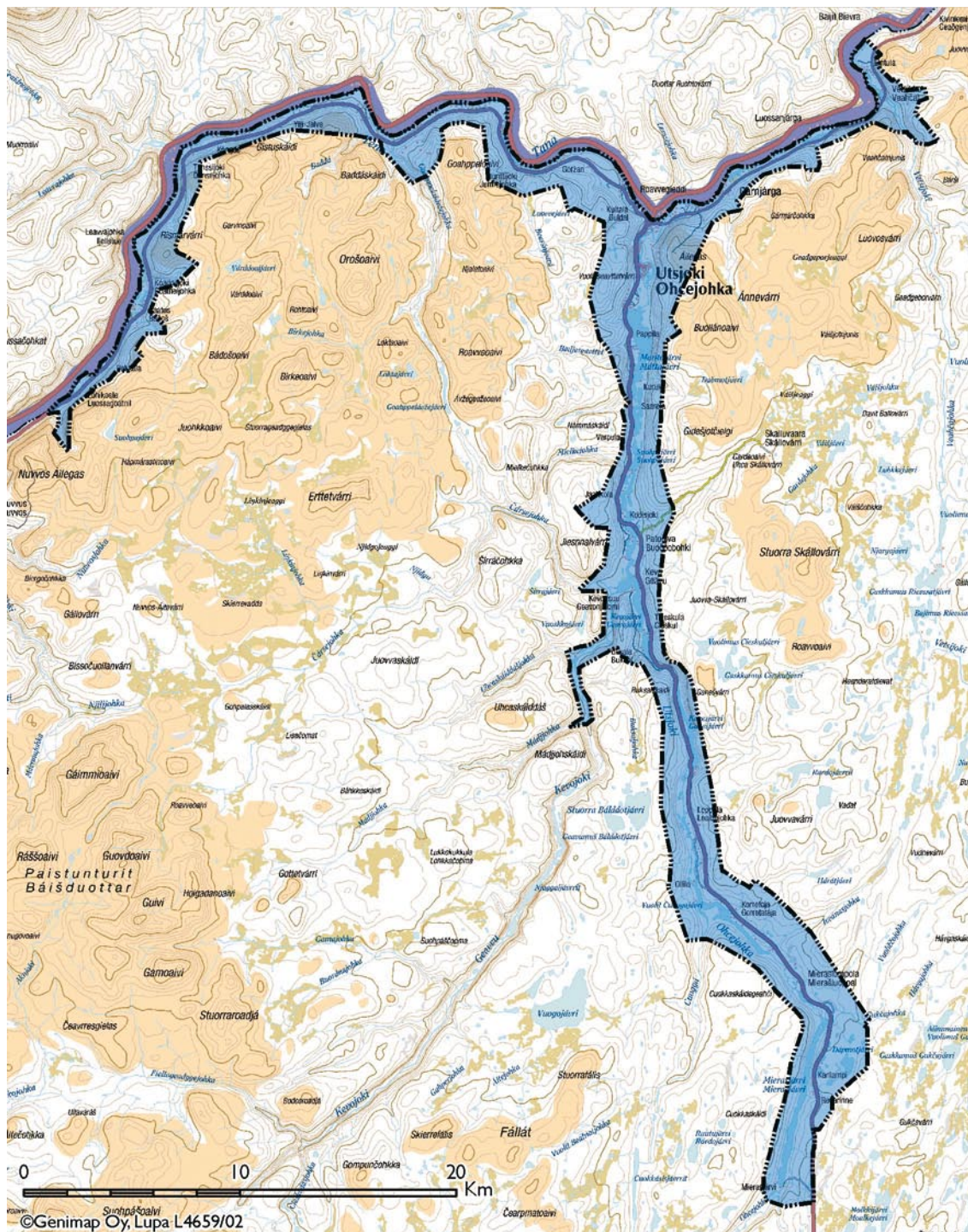
1. Pilot local master plan: Nuorgam–Vetsikko



Pilot local master plan: Nuorgam–Vetsikko

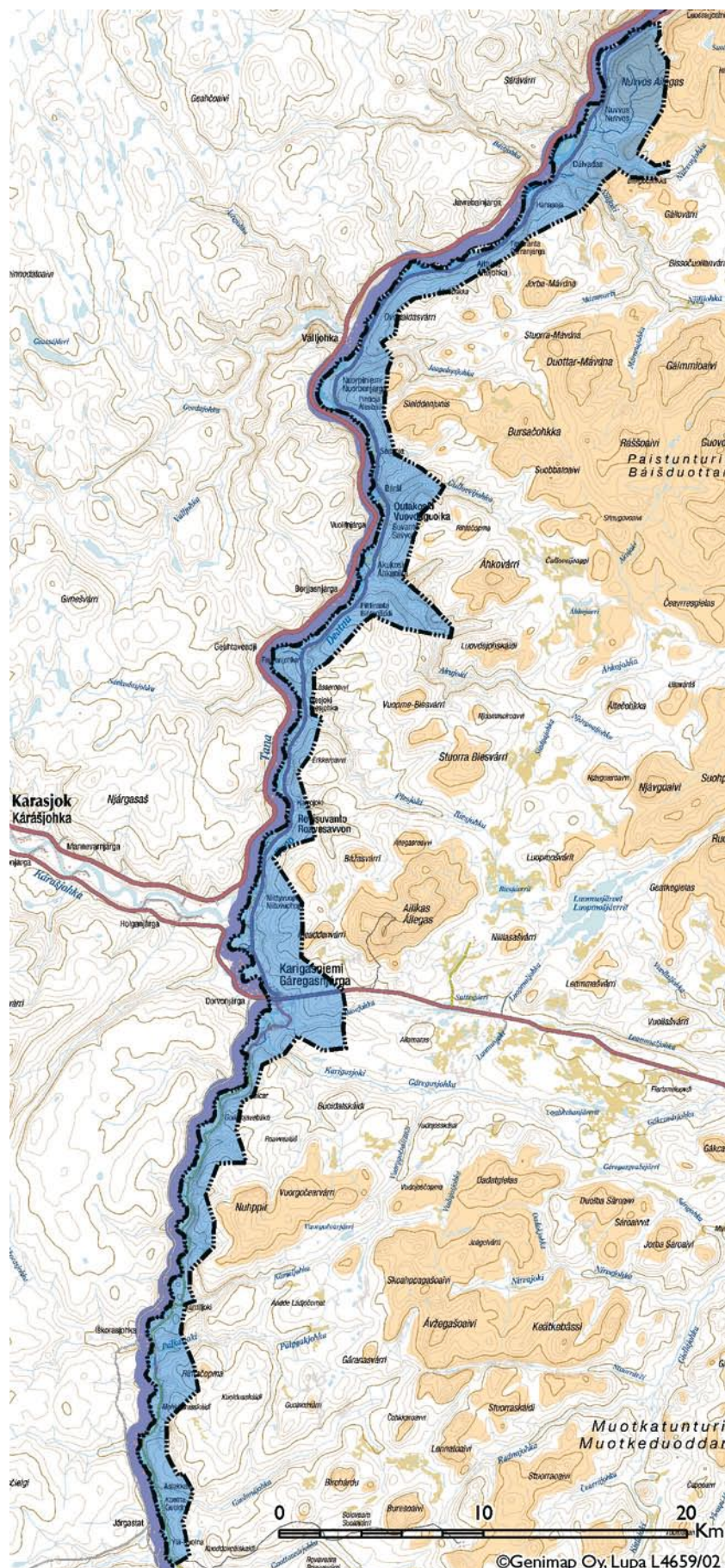
- The initiation of the plan was publicized 16.6.2004, local council approved the plan 10.11.2005
- The sections 199 of LBA and 99 of LBD were unofficially implemented in the process
- The aims and targets of the Act concerning the assessment of the effects of certain plans and programmes on the environment were implemented voluntarily
- In negotiations between authorities (1. ja 2.) the Norwegian partners were involved
- Norwegian partners have given opinions on the plan both in drawing up and in proposition phase

2. Local master plan: Tenojoki-river, Vetsikko–Nuvvus and Utsjoki-river



- The initiation of the plan was publicized 29.9.2004
- The plan is in drawing up phase, proposition will be publicized in June
- Section 199 of LBA will be implemented
- In the first negotiation between the authorities the Norwegian partners were involved
- Norwegian partners have given opinions on the plan in drawing up phase

3. Local master plan: Tenojoki-river: Nuvvus–Ailigas of Karigasniemi



- The initiation of the plan was publicized 2.6.2005
- At the moment the the sketch of the plan has not been publicized
- Section 199 of LBA will be implemented
- In the first negotiation between the authorities the Norwegian partners were involved

Procedure:

- Local authorities will inform the regional environmental centre (REC) about the initiation of the planning process
- REC will supply the participation and assessment scheme and REC's opinion on the scheme to the Ministry of Environment
- In the opinion the REC must comment at least: 1) how the cross-border environmental impacts have been taken into account, 2) how these impacts will be assessed and 3) how the co-operation between neighbouring state will be managed
- The Ministry of the Environment will forward the notification to the other state
- REC will provide the authorities, citizens and communities of the foreign state with possibilities to participate in the planning process
- REC ensures that information is sufficient and that the possibilities to reveal opinions have been provided
- REC makes up with the local authorities that local authorities are in contact with the authorities in the neighbourhood state and in practice takes care of all information needed and provides the authorities with an opportunity to express their opinion on the matter
- The deadlines for the reasoned opinions (objections) and opinions are similar to those in Finland
- The local authority must immediately send the decision to approve a plan to REC
- REC will send the approved map, a key to the symbols used and written regulations as well as the decision to approve a plan to the Ministry of Environment

Implementation:

- The synopsis of the participation and assessment scheme has been translated to Norwegian
- The initiation of the second and the third plan was publicized in Norwegian newspaper and in the website of Utsjoki municipality
- There was information in Norwegian newspaper about the drawing up phase of the second local master plan and the possibilities to state opinions
- A key to the symbols used has been translated in Norwegian
- In the written regulations of the second local master plan the transboundary impacts were summed up in one chapter and were translated in Norwegian
- No special public hearing occasion has been arranged for the Norwegians only. Instead the Norwegians were allowed to participate in negotiations between land-owners and planners (during the drawing up phase of the first local master plan)
- A favourable opinion on the participation and assessment scheme has been sent to the Ministry of the Environment by the REC of Lapland
- The Ministry of the Environment has informed the Norwegian Ministry of the Environment about the matter. The Norwegian Ministry of the Environment has given its opinion to the Ministry of Environment in Finland
- The Ministry of the Environment has not concluded if any actions should take place because of the opinion

The impressiveness of the procedure:

- A key to the symbols used and regulations in the map were defined and made more detailed (including those concerning landscape, a detailed organization of building and protecting the tree stand on the riverbanks)
- In impact assessment attention has been paid to landscape, Sami culture, building, erosion and Teno-river

Challenges:

- Differences between landuse and building legislation in Finland and Norway
- Landownership plays important role in defining the number of building plots in Finland.
- People want also to get answers to issues and problems even if they would not belong to land use planning processes at all (fishing rights)

Cooperation between Finland and Norway in the plan process concerning area disposal in the local council of Utsjoki

*Utviklingsleder Svein-Ottar Helander
Tana kommun, Norway*

The experiences of the Tana council

Plan process and environmental consequences

1. How is the plan process assessed from a Norwegian point of view?
2. How are environmental consequences taken into account in the planning process seen from a Norwegian point of view?

Plan process concerning the 1st sector plan

- Tana council participated at the first and second negotiation meetings dealing with the 1st sector plan in the administrative county of Utsjoki
- Tana council were briefed about the rough draft of the 1st sector plan at a meeting with the owners of the land in Nuorgam

Plan process concerning the 2nd sector plan

- Tana council participated at the first negotiation meeting in Utsjoki
- Hearings about the EIA programme because of new EIA provisions in Finland from 01.07.2005
- Made a statement about the hearing concerning the 1st plan draft
- Participated at the subsequent negotiation meeting and made additional statements

Comments on the plan process

- The county council experienced the plan process as
 - Open
 - Including
 - Excellent
- It took some time for the county council to realize the real contents of the plans (language barriers)

Environmental consequences concerning the 1st sector plan seen from a Norwegian point of view

- Building holiday homes and tourist establishments on the river bank (the 100 meter zone on the Norwegian side)
- Scattered building of houses (densely built-up areas on the Norwegian side)

Environmental consequences of the area plan seen from a Norwegian point of view

- Treble the number of holiday homes outside densely built-up areas/villages/urban areas, i.e. 450 new cabins in the administrative county of Utsjoki in the period up to 2020
- Most of the cabins will be built in the 100 meter zone, many as close to the river as 20–30 meters
- Seen from a Norwegian point of view this is startling

Environmental consequences of sector plan 2 seen from a Norwegian point of view

The area disposal which has been planned will have a negative effect on :

- aesthetical values associated with landscape
- the value of areas on the Norwegian side in connection with
 - outdoor life (the feeling of being in untouched nature disappears when the bank zone on the opposite side of the river is no longer vacant)
- The water directive of the EU demands equal management of water resources affecting two countries in border areas
- This implies that a building process along the river, on an equally large scale, might force its way on the Norwegian side, just like it is implemented on the Finnish side. This is in violation of the existing Norwegian regulations.

Summary

- Involving the neighbouring administrative county in Norway was excellent
- The Norwegian propositions/suggestions were not taken into consideration in the subsequent plan process
- It would have been desirable if the process with the area plan and the plan for diverse use had been coordinated

Area management/administration and area planning in and along the Tana water system / the Tana river

*Utviklingsleder Svein-Ottar Helander
Tana kommun, Norway*

The national set of regulations

- General political directions/guidelines for protected water systems/watercourses
- The law concerning water resources, § 1
- Plan and building regulations
- Part of the county's plan system dealing with/concerning area planning

Management practice in the administrative county of Tana

- Undertakings in correspondence with the area plan are granted by the local authorities through administrative decisions
- Undertaking applications which are not in correspondence with the area plan are dealt with as follows:
 - Refusal
 - Dispensation
- For minor building operations on a built-on property, f.i. a garage or woodshed, no permission, often only a note to the local authority, is necessary

Conflicts between the administration and the public

- People in the local area want to build houses, holiday homes and huts used in connection with salmon fishing close to the river
- People from other parts of the country want a site for a holiday home

Challenges to attend to as to environmental consequences

- A continued restrictive attitude to enterprises within the 100 meter zone along the watercourse
- A common plan for the local authorities along the river system as to areas where building undertakings can be permitted
- Approximately equal area management on both sides of the Tana river system

Session III:
From Research to Implementation

Transboundary EIA in the North Calotte region from the perspectives of international and European Union Law

*Research Professor Timo Koivurova,
Director of the Northern Institute for
Environmental and Minority Law, Arctic Centre*

Transboundary EIA Procedure in the North Calotte Region

Various international agreements that regulate how the EIA and SEA procedure should be conducted in cases of transboundary environmental detriments are in force in the North Calotte region, i.e. the northern parts of Finland, Sweden and Norway. EU directives also regulate these procedures, above all, between the EU Member States of Finland and Sweden. EIA and SEA directives are also in force for Norway, a Member State of the European Free Trade Association (EFTA) through the Agreement on the European Economic Area (EEA).

In terms of international law, the key agreements were negotiated in the UN Economic Commission for Europe (ECE), i.e. the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context, which was complemented by the 2003 Kiev Protocol on Strategic Environmental Assessment that has not yet come into force (ratified by 4 States whereas 16 are needed); the 1992 Helsinki Convention on the Transboundary Effects of Industrial Accidents; and the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Nordic cooperation has also played an important role in the transboundary EIA procedure but it has largely been replaced by later United Nations ECE agreements. These ECE agreements have also been of primary importance in developing European Union EIA and SEA legislation because the EC has been a Party to all these agreements and later implemented them to become part of European Union Law through its directives.

The directives are important within the North Calotte region for the very reason that the EEA Agreement makes them binding on Norway in terms of international law (and naturally on Sweden and Finland in terms of European Union Law). However, there is no justification in over estimating their significance due, for instance, to the fact that the EIA Directive (Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC)) does not provide as detailed a legislative foundation as does the Espoo Convention with respect to transboundary EIA procedure. Furthermore, it is important to bear in mind that because Norway is not a member of the EU, the international agreements to which all three States are parties provide a more equal and clearer legal foundation for going through a transboundary EIA. Naturally, the EU directives supplement this legal foundation. In addition, certain agreements exist which also guarantee indigenous peoples special rights in the transboundary EIA procedure.

1. The Espoo Convention and EIA Directive as the basis for a transboundary EIA procedure in the North Calotte

A project-level EIA is fundamentally regulated by the Espoo Convention negotiated in 1991. The European Community (EC) also ratified the Espoo Convention and it implemented it, with the amendment of 1997, in the 1985 EIA Directive. The Espoo Convention provides a much more precise basis for a transboundary EIA procedure in the North Calotte region than Article 7 of the EIA Directive. However, in some aspects the EIA Directive provides a legal foundation that goes further than the Espoo Convention does. Consequently, these legal instruments should be applied to complement one another.

1.1 When should a transboundary EIA procedure be implemented?

An especially important aspect of the transboundary EIA procedure is the stage in which the Party of origin (i.e. the State in whose territory it is intended to locate a proposed activity) decides whether the international agreements, and the Espoo Convention in particular, oblige it to put a transboundary EIA procedure into motion. This is frequently a matter that for instance, a private company considers unfavourable because therefore, obtaining a permit for its proposed project may encounter more difficulties; an affected Party (a State in whose territory the environmental impacts of the proposed activity are likely to drift) and its public are often opposed to the project being built, especially when they can expect hardly any financial gain from the project (the project also becomes an international matter, which a company frequently does not wish).

An interesting difference between the Espoo Convention and the EIA Directive concerns when a transboundary EIA procedure should be implemented. The Espoo Convention stipulates a Party of origin to implement an EIA procedure:

For a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity. (Emphasis added by the writer)

The Party of origin is therefore not obliged to implement a transboundary EIA procedure simply on the grounds that the proposed activity is listed in Appendix I; rather, in addition, it should have "likely significant adverse transboundary impacts." The Party of origin therefore has a relatively large amount of discretionary power to decide on implementing a transboundary EIA procedure because only the terms "transboundary impact" and "impact" are explicitly defined in Article 1 of the Espoo Convention. Moreover, it should be pointed out that the categories of activities listed in Appendix I are, in some aspects, open to interpretation. For example, in Finland, mining activities are being planned to an increasing extent in different parts of Lapland, including in the proximity of Finland's Norwegian and Swedish borders. Mining activities are one of the categories listed in Appendix I of the Espoo Convention, but this category is comparatively broadly defined: "Major mining, on-site extraction and processing of metal ores or coal" (Appendix 1, item 14). In order to limit this power of discretion, the Espoo Convention includes a so-called Inquiry Commission that investigates whether the Espoo Convention can be applied to a specific proposed activity. In situations where the Party of origin considers that the Convention does not apply, the affected Party can take the Party of origin to Inquiry Commission proceedings, even against its will or in its absence (see Article 3, paragraph 7 and Appendix IV).

If a proposed activity is not listed in Appendix I, the Espoo Convention can be applied in such instances where a) it is likely to cause significant adverse transboundary impacts and b), the Parties are agreed that for this reason, the Espoo Convention should be applied to the activity. Appendix III provides guidelines when deciding whether to apply the Espoo Convention to the proposed activity if it does not appear in Appendix I. Such criteria include the size of the proposed activity, its location and impacts. In such instances, the Inquiry Commission cannot be used.

The Espoo Convention therefore leaves much to the discretion of the Party of origin as to whether to implement a transboundary EIA procedure. The decision of the Inquiry Commission – to which an affected Party can take a Party of origin even without its consent and in its absence – is just a recommendation even if its de facto effect may be far-reaching. If a Party of origin does not comply with the decision, the affected Party has at its disposal all the possibilities offered by general international law in cases of breach of agreement, i.e. mainly going through dispute proceedings (political and judicial) and the possible use of countermeasures. It is interesting that all three States

– Finland, Sweden and Norway – have made declarations under Article 36, paragraph 2 of the Statute of the UN International Court of Justice, which means that any of these States can institute proceedings against another in this court of law (including in such cases where, in the view of the affected Party, the Party of origin does not comply with the Espoo Convention in its refusal to implement a transboundary EIA procedure).

To sum up, it can be stated that the Espoo Convention fundamentally applies to the activities listed in Appendix I with the provision that they are likely to cause significant adverse transboundary environmental impacts. If the Parties so agree, the Espoo Convention can also be applied to activities other than those listed in Appendix I which are likely to cause significant adverse transboundary impacts. Moreover, in terms of procedure, the difference lies in whether the proposed activity is listed in Appendix I or not; the Inquiry Commission is applicable only to activities listed in the Appendix.

This Inquiry Commission does not appear in the amended EIA Directive (Article 7), although the whole purpose of making this explicit amendment to the Directive in 1997 was to implement the Espoo Convention within the EU. However, breaching European Union Law is more likely to lead to legal consequences, so it is therefore important to review what the EIA Directive says about the obligation to implement a transboundary EIA procedure:

Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public (Article 7)

The EIA Directive uses very similar criteria for implementing a transboundary EIA procedure to the Espoo Convention, in that the proposed project is likely to cause significant transboundary impacts. (The only difference is that the “adversity” of the impacts has been omitted but the criteria are the same in practice). The affected State in the EIA Directive can ask the State of origin to implement a transboundary EIA procedure if its territory is likely to be the target of significant impact. If an affected State so requests, and the State of origin takes the view that there is no need to implement a transboundary EIA procedure, the Commission can take the matter as infringement proceedings to the European Court of Justice (ECJ) or, if the Commission does not use its right of action, the affected State can take the State of origin to the ECJ (Articles 226 and 227, Treaty of Rome). In this way, implementing a transboundary EIA procedure between Sweden and Finland, for instance, may come under more pressure when inter-state consultations take the possible legal consequences into consideration. The matter becomes slightly more complicated in terms of Norway because Norway’s obligation towards Finland and Sweden as included in the EIA Directive falls under international law on the basis of the EEA Agreement. Therefore, in this instance, the normal possibilities to react to a breach of agreement as supplied by international law apply.

1.2 National EIA serves as the basis for transboundary EIA procedure

The Espoo Convention was negotiated to apply to situations where a national EIA procedure is applied to a proposed activity. For this reason, Article 2 of the Convention obliges the Contracting Parties to establish a national EIA procedure and permit application procedure with respect to the activities listed in Appendix I (see also Article 2, paragraph 4). The EIA Directive contains a substantially more exhaustive list of activities (Annex I) to which a national EIA procedure should be applied. Furthermore, the threshold values for these project categories are more precisely defined. Because such an extensive number of activities go through a national EIA, there is also a greater possibility that the States will agree to apply the Espoo Convention on the basis of Article 2,

paragraph 5 (i.e. that the States agree that the Espoo Convention is applicable to certain activities that are not listed in Appendix I).

The Espoo Convention links the actors in the affected Party – the affected Party and its public – with the functioning of the national EIA procedure of the Party of origin. An affected Party and its public should be informed of an EIA procedure at latest when the Party of origin announces the commencement of an EIA procedure to its public. If the EIA procedure of the Party of origin does not include a scoping procedure (the stage of an EIA where the decision is made, with the assistance of the public and the competent authorities, as to what should be studied in the EIA studies) – or other equivalent procedure based on which the public is able to participate in the EIA procedure at its early planning stage, it may be that the affected Party receives notification only after the environmental studies have already been conducted. This has aroused discussion concerning the reciprocity of the obligations in the Espoo Convention, in other words, are the obligations the same for all States if one Member State has a scoping procedure and another does not. Because the Espoo Convention negotiations were unable to harmonise more the EIA procedures, I feel it is clear that the Contracting Parties also approved this state of affairs. Moreover, amendments to the EIA Directive have included no obligations for Member States to establish a scoping procedure as part of their national EIA.

1.3 Planning phase of an environmental impact assessment

The Espoo Convention obliges a Party of origin to inform an affected Party of the basic information concerning a proposed activity and, if the EIA procedure of the Party of origin includes a scoping procedure, the Convention calls for the Contracting Parties to arrange the participation of the public of the affected Party in the scoping procedure on the same terms and conditions as the public of the Party of origin are able to participate (Article 3, paragraph 8). The affected Party may also present its position in the scoping procedure.

1.4 Environmental studies

The Convention requires the Party of origin to request assistance from the affected Party when conducting environmental studies, if this information is necessary. In my opinion, it is difficult to justify why the Party of origin should not ask for such assistance from the affected Party in those instances where the environmental impacts are directed at the environment in the affected Party. In such instances, the information it provides about its own environment is an important additional assessment of the overall impacts from the proposed activity. The affected Party is also obliged to provide “reasonably obtainable information” if the Party of origin so requests (Article 3, paragraph 6).

1.5 Views based on environmental studies

The public of the affected Party and the affected Party retain the right to have a say in the environmental studies. The Party of origin and the affected Party are both obliged to ensure that the public of the affected Party are able to comment on the environmental studies in the same way as the public of the Party of origin. The Party of origin is required to arrange consultations with the affected Party based on the environmental studies and the parties can raise various matters in the consultation, such as those concerning possible alternatives for the proposed activity (Article 5).

1.6 Final decision

The Party of origin should “take due account” (Article 6, paragraph 1) of the views of the affected Party and its public in its final decision-making. The Party of origin should also provide the affected Party with the final decision on the permit application. The Convention does not oblige an affected

Party to provide the decision to its public, which naturally, is very desirable in those cases where its public has participated in a transnational EIA procedure. Here, the EIA Directive goes a step further because it requires that the comments of the affected State and its public “must be taken into consideration” in final decision-making (Article 8), that the State of origin must send to the affected State a more detailed report of the manner in which these views were taken into consideration in final decision-making and also, that the public of the affected State is informed of the final decision (Article 9, paragraph 2).

1.7 Post-project analysis of the transboundary environmental impacts of an activity

The Espoo Convention includes the possibility for the Contracting Parties to arrange a post-project analysis of the environmental impacts, but there is no legal obligation to do so.

1.8 Conclusion

As already stated, the Espoo Convention includes more detailed regulations on how a transnational EIA procedure should be arranged. However, in part, the EIA Directive contains regulations that go a step further and the consequences of being in breach of its obligations also differ from the legal consequences of being in breach of the Espoo Convention.

2. Other directives and international agreements/ instruments as the basis for a transboundary EIA

The transboundary EIA procedure in the North Calotte region is based fundamentally on the Espoo Convention and the EIA Directive. However, there are other international agreements that constitute a supplementary basis for a transboundary EIA procedure and that apply within the North Calotte region. First, there is Directive 96/61/EC concerning integrated pollution prevention and control (the IPPC Directive, which is also part of the EEA Agreement). Article 17 regulates on an inter-state transnational EIA procedure where the main emphasis is explicitly on the exchange of information between States based on the permit application procedure. Annex I of this Directive includes a large number of various activities hazardous to the environment, far more than those that were included in the Espoo Convention and the EIA Directive, which have concentrated on activities that are most detrimental to the environment. The transboundary exchange of information between establishments storing dangerous substances is also briefly regulated in the Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (the Seveso II Directive, Article 13).

Secondly, two Nordic agreements, the NEPC (Nordic Environmental Protection Convention between Norway, Sweden, Finland and Denmark; the first international agreement that regulates a transboundary EIA and which came into force in 1976) and the agreement on common Nordic guidelines on communication concerning the siting of nuclear installations in border areas (an agreement between Finland, Norway, Sweden and Denmark on communications concerning safety issues for nuclear installations built in the vicinity of the countries' inter-state borders and which came into force in 1976), regulate the transboundary EIA procedure but as a later agreement, the Espoo Convention largely repealed them with respect to their areas of application that overlap (see the Vienna Convention, Article 30, which articulates the norm for customary law with the same subject matter, *lex posteriori*). However, it should be borne in mind that the Espoo Convention permits only the application of such agreements where the level of regulation is equal to or more stringent than the Convention itself (Article 2, paragraph 9). The NEPC, while it includes general rights of appeal for “nationals”, its transboundary EIA procedures (2) do not include the right of nationals to participate, so they do not meet the level of obligation of the Espoo Convention. The same applies to the agreement on common Nordic guidelines on communication concerning

the siting of nuclear installations in border areas where nationals also do not have the right of participation. However, in such instances where the Espoo Convention is not considered applicable, there is the possibility to apply one or other of these two agreements. The agreement on common Nordic guidelines on communication concerning the siting of nuclear installations in border areas is the only one that establishes a transboundary EIA procedure specifically for certain nuclear power projects. However, the Espoo Convention covers almost all the nuclear installations that are specified in Section 1, so this agreement is no longer of use in other than those marginal cases where the Espoo Convention does not apply (compare Appendix I, items 2 and 3 of the Espoo Convention and Section 1 of the agreement on common Nordic guidelines on communication concerning the siting of nuclear installations in border areas).

The NEPC is also a kind of safety-net agreement. The NEPC and the Espoo Convention regulate the project-level transboundary EIA procedure, and if both Conventions apply to a specific proposed activity in the Espoo Convention, the Espoo Convention is applicable (see above). However, because the NEPC applies to a wider number of situations, it can safeguard the possibility to implement a transboundary EIA procedure. As a matter of fact, according to a study conducted by Professor Jonas Ebbesson for the Nordic Council of Ministers, the NEPC has facilitated several information exchange procedures between the Nordic countries, and even after the entry into force of the Espoo Convention, appeals have been made to the NEPC. In the Vuotos case, the Finnish Ministry of the Environment appealed to the Espoo Convention as the grounds for its notification, which was prepared much earlier than would have been required by the NEPC. At that time, 1995, the Espoo Convention was not yet in effect.

The applicability threshold of the Espoo Convention is more stringently formatted than that of the NEPC which, for its part, applies if "the activities entail or may entail nuisance of significance in another Contracting State" (Article 5), which one could claim as being at a lower level than "a significant environmental effect" because the NEPC does not require the likelihood of a transboundary environmental impact. In addition, it applies to all project-level activities that have certain loosely defined environmental impacts whereas the Espoo Convention is clearly structured for a transboundary EIA for activities listed in Appendix I. However, an inter central Government transboundary EIA procedure is not applicable in the NEPC because it only applies to considerable transboundary environmental impacts (Articles 11 and 12).

The Convention on the Transboundary Effects of Industrial Accidents is also in force in the North Calotte region and it includes an EIA procedure very much on a par with that in the Espoo Convention. Therefore, it too acts as a sort of safety net in terms of the transnational EIA for those high-risk activities to which the Espoo Convention does not apply. The scope of application for these Economic Commission for Europe (ECE) agreements is defined in a different manner because the Convention on the Transboundary Effects of Industrial Accidents defines the specific amounts of dangerous substances that may be used in a proposed activity whereas the Espoo Convention defines the nature and size of the activity. Their reciprocal legal relationship is regulated specifically in Article 4, paragraph 4 of the Convention on the Transboundary Effects of Industrial Accidents according to which the transboundary EIA procedure in the Espoo Convention also conforms with the requirements of the Convention on the Transboundary Effects of Industrial Accidents.

International watercourse agreements are also important in the North Calotte region. They were signed before the Espoo Convention so, in principle, the Espoo Convention overrides them in those cases where it is applicable. However, in those cases where the Convention does not apply, these border watercourse agreements also provide the basis for studying the transboundary environmental impacts of proposed projects. The Convention between Norway and Sweden on certain questions relating to the law on watercourses signed in 1929 (and still in force) provides the right for either Party to implement a commission procedure if a Party suspects that border watercourses (watercourses of all kinds) have been changed at the instigation of the other Party.

The Commission has the right to examine the facts concerning a case with the assistance of the Parties on the basis of which it can approve a non-binding recommendation to resolve the case. The 1981 Agreement on a Finnish-Norwegian Frontier Water Commission establishes a Frontier Water Commission to whom both Parties must provide notification of plans or projects that may have significant impacts on the countries' border watercourses as broadly defined. In such cases, the Commission is entitled to have studies conducted on its behalf and to receive assistance from the authorities of both Parties. It can make non-binding recommendations. The Finnish-Swedish Frontier River Commission (established based on the mutual Frontier River Agreement of 1971, Chapter 2) has the most extensive prerogative because it has the right to make decisions concerning permits for projects planned for the watercourse area; projects that will cause environmental harm to the water area regulated by the agreement may also fall within the scope of the permit process. The Frontier River Commission also has the right to conduct the studies it needs and to receive assistance in conducting those studies from the authorities in the Contracting States. The Finnish-Swedish Frontier River Agreement is currently undergoing revision. The States have already signed a new agreement but it has not yet been brought into force. At this time, the Parties are still examining whether the new agreement is acceptable, and the old treaty is in force.

It is also important to take into consideration the Guidelines on Environmental Impact Assessment in the Arctic (the North Calotte region is part of the Arctic region) negotiated on the initiative of Finland. These Guidelines were negotiated as part of the Arctic Environmental Protection Strategy (AEPS) for eight Arctic countries, which ended at the Ministerial Conference in Alta in 1997 (and the AEPS functions were then merged into part of the activities of the Arctic Council). They include recommendations mainly on applying a national EIA procedure in Arctic conditions, but the instrument also includes one Chapter concerning the transboundary EIA in the Arctic region. It is interesting that these Guidelines erroneously state that the Espoo Convention is applicable in terms of all activities listed in Appendix I (see above). The problem with the Guidelines in Chapter 11 is that they base the regulations on the Espoo Convention to which not all the Arctic countries are Contracting Parties (Iceland, Russia and the USA are not (yet) Parties to the Espoo Convention).

The Guidelines emphasise that foreign actors should be included in the national process at the initial stage of the national EIA procedure. The Guidelines recommend that during the scoping phase, the Arctic countries concerned should also be able to agree on the harmonisation of research methodology and, in an ideal situation, that a joint inter-state coordination group could be established for the active exchange of information between the Parties. Owing to the vulnerability of the Arctic environment, the Guidelines recommend that activities other than those listed in Appendix I of the Espoo Convention should conform to the transboundary EIA procedure and that lower threshold limits than those defined in Appendix I should apply to the Arctic region.

2.1 Conclusion

Because all three North Calotte countries are Contracting Parties to the Espoo Convention and because the Espoo Convention provides more detailed regulation on the transboundary EIA, it provides the best foundation for the transboundary EIA procedure. The EIA Directive may also become applicable because it includes stronger possibilities to react in cases of breach of obligation than the Espoo Convention and because, in certain points, it goes further than the Espoo Convention. Because the Espoo Convention principally applies to the activities in Appendix I, it omits a certain number of activities that can cause transboundary environmental impacts. The EIA Directive, IPPC Directive, NEPC, the agreement on common Nordic guidelines on communication concerning the siting of nuclear installations in border areas or the Convention on the Transboundary Effects of Industrial Accidents may then be applied to such situations. The Arctic EIA Guidelines also provide recommendations for conducting a transboundary EIA in the North Calotte region.

3. International SEA procedure

According to Article 2, paragraph 7 of the Espoo Convention, the Contracting Parties shall, to the extent appropriate, endeavour to apply the principles of environmental impact assessment in drawing up policies, plans and programmes: "Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes." This non-binding Article finally led to the signing of the so-called Kiev Protocol on Strategic Environmental Assessment in 2003 (all the countries in the North Calotte region were signatories). The Protocol was signed by 36 States and the European Community but it has so far been ratified by four States (incl. Finland and Sweden; 16 are needed for the Protocol to enter into force).

Because the Kiev Protocol will only enter into force sometime in the future, it is extremely important that the EU SEA Directive (DIRECTIVE 2001/42/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment) is legally binding on the countries in the North Calotte (including Norway through the EEA Agreement). Now, I shall briefly review the content of the SEA Directive, which also served as an example for the SEA Protocol negotiations. As a matter of fact, the content of the SEA Directive and SEA Protocol are virtually identical and they both fundamentally regulate the type of national SEA procedure the Member States are obliged to establish. Both the SEA Directive and the SEA Protocol include only one Article concerning the transboundary SEA procedure (Article 10 of the SEA Protocol).

According to the SEA Directive, the transboundary SEA procedure is implemented in very much the same way as is the transboundary EIA procedure. According to Article 7, paragraph 1:

Where a Member State considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State.

Therefore, the transboundary SEA procedure is implemented if a plan or programme under preparation is likely to cause significant effects on the environment in another Member State. The SEA Directive principally applies to the plans and programmes of specific listed societal sectors as well as to those plans and programmes in which is affirmed the framework for permit application or approval decisions for future projects listed in Annexes I and II of the EIA Directive (plans and programmes made exclusively for defence or civilian preparedness and finance or budget plans are excluded from the area of scope of the SEA Directive).

The affected State in the SEA Directive should inform the State of origin that it wishes to consult about a programme or plan before it is approved. If the affected State has initiated such consultations, the public of the affected State should be informed of the matter and they should also be provided the opportunity to express their opinion on the said matter. The opinions of the public of the affected State and the position of the affected State should also be taken into consideration when approving the programme and the plan and the decision should also be conveyed to the affected State and its public.

4. The rights of nationals or the public in the transboundary EIA and SEA procedures

The Espoo Convention obliges the Contracting Parties to establish an EIA procedure where "the public" can participate in assessing the environmental impacts of the activities listed in Appendix I. The term "the Public" is defined in Article 1, item (x) of the Espoo Convention and it means "one or more natural or legal persons." Inspired by the Aarhus Convention, an amendment was made to the Espoo Convention (decision II/14, which has been ratified by only four Contracting Parties, although ¾ of the Parties would be required for it to enter into force), as a result of which "... and, in accordance with national legislation or practice, their associations, organisations or groups" was added to the end of item (x). The main importance of this change of wording is that also other than legal persons – e.g. citizen movements – are given standing. There is also a stronger emphasis on the role of environmental NGO's. It seems unlikely that in the near future this broader definition will enter into force as an amendment to the Espoo Convention. The Espoo Convention ensures that the opportunity provided to the public of the affected Party to participate in the transnational EIA procedure is equivalent to that provided to the public of the Party of origin (Article 2, paragraph 6).

The EIA Directive was also amended as inspired by the Aarhus Convention and this broader definition of "public" or "the public concerned" replaced the earlier concept of "nationals", also in terms of the transnational EIA procedure. Strangely enough, Article 7 of the EIA Directive (the Article concerning transboundary EIAs) still refers to the concept of "nationals" and "nationals concerned" although the 2003 amendment to this Directive replaced this concept with "the public" – the term "national" is not found anywhere else in the EIA Directive other than in Article 7. However, Article 7, paragraph 5 makes it clear that "the public" concerned also refers to the public of the affected State in the transnational EIA procedure. Article 7, paragraph 5 of the Directive provides the opportunity for Member States to use a standardised procedure where the rights of the public concerned are assured.

The ECE Aarhus Convention that currently has 39 Contracting Parties (including all three North Atlantic countries) most fundamentally regulates the public's rights of participation. This Convention also ensures the public and others (Article 3, paragraph 9) – especially environmental organisations – extensive rights in environmental decision-making at its different levels, i.e. with regard to specific decisions at the planning and legislative levels. It is noteworthy that these are assured extremely extensively in Article 3, paragraph 9 of the Convention:

Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

In decision-making on environmental matters – one of the pillars of the Aarhus Convention – the most explicit rights given to the public refer to decision-making concerning specific activities, i.e. project-level (Article 6). These are regulated in great detail and in legally binding language. These regulations are extremely fundamental in terms of the transboundary EIA procedure because, for instance, the Espoo Convention ensures the same rights to the public of the affected Party to participate in the EIA for the activity as the public of the Party of origin. Article 6 has a total of 11 paragraphs that regulate such matters as when and how the public should be informed of a proposed activity, how the public should be able to express their opinions about the activity and how their opinions should be taken into consideration in decision-making. The public's participation in preparing plans, programmes and action programmes related to the environment (Article 7) is regulated in a legally binding manner but much more briefly and broadly than in Article 6. The public's participation in the drawing up of the authority's regulations and/or generally applicable

legally binding documents (Article 9) is then a non-binding obligation through which the Contracting Parties undertake to foster this form of the public's right of participation in different ways.

The Guidelines for an Arctic EIA place much weight on the broadest possible participation rights of the public of the affected State in the transnational EIA procedure in the Arctic region. The use of transnational networks is particularly recommended in the transboundary SEA procedure; the Guidelines give the WWF as an example.

5. The rights of indigenous peoples in the transboundary EIA and SEA procedures

How then are indigenous peoples able to participate in the transboundary EIA or SEA procedure? Are they merely legal persons or organisations that have the same right of participation as other participating Parties? According to Article 2, paragraph 6 of the Espoo Convention, the Party of origin is obliged to treat the public in the affected Party in an equivalent manner to the public in the Party of origin. This makes the following argument feasible.

Indigenous people, the Sami in the North Calotte, have been given certain special rights under international law. The key sources of law are the International Labour Organization's Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (which, out of the countries in the North Calotte region, is only binding on Norway) and the UN International Covenant on Civil and Political Rights signed in 1966, CCPR, to which all three North Calotte countries are Contracting Parties (total 151 States). Compliance with the CCPR is monitored by the Human Rights Committee, which has interpreted Article 27 of the Covenant, the "minority protection article", in an extremely favourable light for indigenous peoples. In its general comments and case practice (based on individual complaints), the Human Rights Committee has deemed that the traditional livelihoods of indigenous peoples shall enjoy protection under the protection of the culture of an indigenous people. Based on individual complaints (individual complaints can only be brought against those States that are Contracting Parties to the Optional Protocol to the CP Covenant), the Human Rights Committee has, in its case practice, deemed that Article 27 should be interpreted so that a State shall not approve commercial activities in areas inhabited by indigenous peoples if this activity endangers the viability of their traditional livelihoods (e.g. reindeer husbandry). Furthermore, the Committee has deemed that in assessing the acceptability of an activity, a State must take into consideration all commercial activities taking place in an area, in other words, whether these cumulative activities constitute a danger to the traditional livelihoods of indigenous peoples. Consequently, a State should therefore assess – normally explicitly in the EIA procedure – the adverse effects of commercial activities on, for instance, reindeer husbandry, the traditional livelihood of the Sami.

According to the Human Rights Committee, Article 27 calls for a State to enter into meaningful consultations with representatives of those indigenous peoples whose traditional livelihood is interfered before granting a permit. Article 27 therefore requires from a State a particular obligation of consultation in terms of indigenous peoples, depending on the matter and extent of the consultation (either the Saami Parliament or, for instance, a reindeer herding cooperative or herding group). If the Espoo Convention, as well as the national EIA procedure, applies to the proposed activity, it would be worth considering incorporating this obligation to consult with the national EIA procedure. The Sami are very well informed about the above-mentioned Article because Sami in Sweden and Finland have already made four individual complaints to the Human Rights Committee based on the provisions stipulated in Article 27.

If Finland, as a State of origin in the transnational EIA procedure, consulted with its Sami then according to Article 2, paragraph 6, the Sami in the affected State should be treated in a manner equivalent to the Sami in the State of origin – depending naturally on whether the transboundary impact would also cause harm to the traditional livelihood of the Sami in the affected State (for instance, Sweden). In such a case, it would be important for the affected State (say, the Swedish State) to arrange consultations with its own indigenous groups and the outcome of these consultations would be referred to the inter-state consultation on the basis of Article 5 of the Espoo Convention.

The Guidelines on Environmental Impact Assessment in the Arctic include recommendations for such situations in a transboundary EIA. The Guidelines emphasise the role of indigenous peoples in transboundary EIA procedures and especially the role of their international umbrella organisations. The Arctic EIA Guidelines mention separately the Saami Council (which represents the Sami in four States) as a forum through which the Sami are able to organise their participation in a transboundary EIA procedure that is taking place in the Arctic region.

The proposed new Nordic Sami Convention will be an interesting agreement of the future. An expert group – comprising officials from Finland, Sweden and Norway and representatives from the Saami Parliaments – submitted the draft Convention for circulation of comments a short time ago (27 October 2005). This draft Convention regulates the status of the Sami, to a great extent elaborating on the rights guaranteed by the CCPR – and the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries – including in transboundary EIA procedures, explicitly with an eye to the Sami.

Natura 2000 appropriate assessment in relation to environmental impact assessment

Senior Researcher Tarja Söderman
Finnish Environment Institute, SYKE
Nature Division

Natura assessment in Finnish legislation ...

- Nature Conservation Act 65 §: "If a project or plan, either individually or in combination with other plans and projects is likely to have significant adverse effect on the ecological value (conservation objectives) of a site included in, or proposed by the Council of State for inclusion in, the Natura 2000 network for the purpose of protecting this ecological value, the project's planner or implementer is required to conduct an appropriate assessment of its impact. The same shall correspondingly apply to any project or plan outside the site which is liable to have a significantly harmful impact on the site"

... Natura-assessment in Finnish legislation

- Nature Conservation Act 65 §: "The above assessment of impact can also be carried out as part of the assessment procedure referred to in the Act on Environmental Impact Assessment Procedure " (EIA)
- LSL 66 § "No authority is empowered to grant a permit for the implementation of a project, or to adopt or ratify a plan, if the assessment procedure or the requested opinion referred to indicates that the project or plan would have a significant adverse impact on the particular ecological value for the protection of which the site has been included in, or is intended for inclusion in, the Natura 2000 network"
- Opinion procedure: the authority has to ask an official opinion on the Natura assessment from a regional environment centre.

What kind of projects and plans can have significant negative effects on conservation objectives of Natura 2000 sites?

- The project or plan can be important or regionally very extensive (a broad spatial planning / building project) or relatively small (a tourism project)
- Requirement for a Natura assessment and its outcome depends on the assessment criteria set by Nature Conservation Act (Habitats Directive), viz. characteristics of a Natura 2000 site and possible impacts of a plan or a project

When is a Natura assessment necessary?

Duty to assess arises when, effects of a project or plan:

- affect Natura 2000 site's conservation objectives
- have deteriorating character
- are significant
- are anticipated to be likely

Assessment criteria

- Conservation objectives: listed Annex species and habitats in a Natura 2000 data form
- Deterioration: deterioration of living environment of species, disturbance, changes in physical environment; changes affecting particular features of a habitat type, reduction of the area of a habitat type etc.
- Significance: extent of changes, in relation to the importance and location of the site's conservation objectives, delination of the affected area!
- Likelihood: precautionary principle, a reasoned outcome
- Cumulative effects: other existing or planned activities affecting the site
- Even a small change can be significant!

What an appropriate assessment should include?...

- The guidance of the environmental administration 2003 "Biodiversity impact assessment in regional planning, environmental impact assessment and Natura 2000 assessment", includes detailed chapters of Natura assessment, some guidance also in internet pages
- Guidance follows the guidelines of the EU commission
- Natura assessment has a certain form and content in Finnish planning practices Natura assessment is given as a separate or clearly distinctive part of the planning documents – not integrated in planning documents, usually also screening is reported separately
- The opinion of a regional environment centre is given separately and not e.g. as a part of the opinion given on an EIA assessment report

... What an appropriate assessment should include?

- 1. Reasoning for the assessment: result of the screening
- 2. Data used, methods of the data collection and impact assessment
- 3. Description of a project or plan
- 4. Description of other projects and plans that may have cumulative effects in combination with the project or plan in question
- 5. Description of the Natura 2000 site affected
- 6. Description of the affected area by the project or plan and its relation to the Natura 2000 site
- 7. Description of the effects on the natural habitat types and species (Annexes) and integrity of the Natura 2000 site
- 8. Assessment of the significance of the effects
- 9. Description and assessment (their efficiency) of mitigation measures
- (10. Description of alternative solutions, if necessary)
- (11. Description of compensatory measures, if necessary)
- 12. Description of monitoring of the impacts/ Natura 2000 site after approval of the project or plan

Natura assessment in relation to land use planning, EIA and SEA in Finland

- Land Use and Planning Act , 197 §: "Provisions of chapter 10 (Special provisions on the European Union Natura 2000 network) shall be observed when land use plans are approved and ratified" – Natura assessment duty concerns all land use plans
- Natura assessment can be a part of EIA procedure
- Natura assessment duty can require an environmental assessment of plans and programmes (SEA) – in Finland this mostly concerns land use plans and they are anyway assessed according to the Land Use and Planning act following the requirements of SEA directive

How impacts on Natura 2000 sites are assessed in transboundary plans and projects?

- No experience in application of transboundary Natura assessment procedures in Nordic countries?
- If impacts are assessed as part of EIA or SEA, procedures and legislation concerning transboundary impact assessment (Espoo Convention) apply also to the Natura assessment
- Convention on biological diversity (art 14) obliges to introduce appropriate procedures to assess significant adverse effects on biological diversity in EIA and SEA; convention also requires exchange of information and consultation on activities affecting biological diversity of other states or areas beyond the limits of national jurisdiction

Possible cases (1) ...

- **Project or plan in an EU country affecting a Natura 2000 site in another EU country:**
 - Habitats directive, article 6 (3) and 6(4), is applied
 - Nature conservation authorities of the country with likely effects on Natura 2000 site provide expertise to the project proponent or the authority responsible for a plan or programme in Natura screening, viz. helps to consider if Natura assessment is needed or not; the project proponent or authority responsible for planning has to ask advice
 - The final responsibility for a need, adequacy and appropriateness lies with the authority giving the permit or approving the plan after requesting and obtaining an opinion from a nature conservation authority (in Finland a regional environment centre)
- Permit can not be granted or plan approved without a Natura assessment and an opinion from other country's nature conservation authority if there are likely significant negative effects on Natura 2000 in that country.

... Possible cases (2) ...

- **Project or plan in an EU country affecting valuable nature areas in a country which is not an EU member state:**
 - Habitats directive is not applied
 - Natura assessment is not needed, no Natura 2000 sites to be affected
 - Convention on biological diversity is still applied and activities which are likely to significantly affect the biological diversity of other states have to be assessed by bilateral, regional or multilateral arrangements

... Possible cases (3)

- **Project or plan in a country which is not an EU member state, affecting Natura 2000 site in an EU country**
 - the country has no duty to apply Habitats directive
 - according to the Convention on biological diversity the country has the duty to exchange information and consultation on activities affecting biological diversity of other countries or areas outside the borders of the country in question, who is responsible for this information provision and negotiations?
 - requirements to apply Habitats and Birds Directive can come up through project finance if the precondition for financing is the application of these directives

Assessment of the Impacts of Plans, Programmes and Policies in transboundary areas

Senior Researcher Tarja Söderman
Finnish Environment Institute, SYKE

Background

- The 2001 Directive of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (2001/42/EC)
- UNECE's Protocol on Strategic Environmental Assessment to the Espoo Convention (SEA Protocol)

Legislation

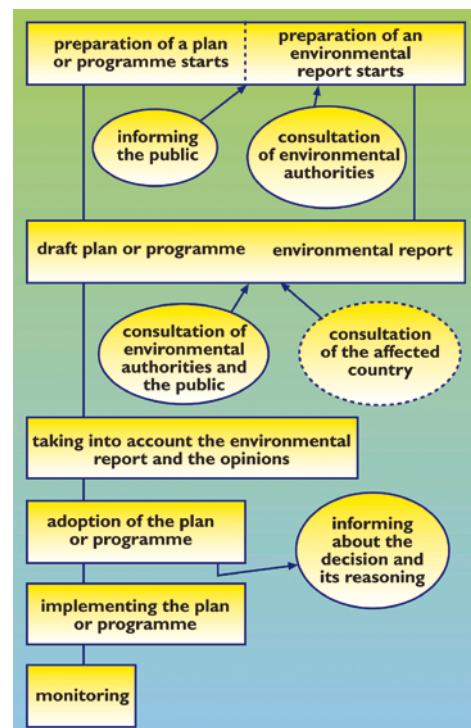
- Act (200/2005) and Decree (347/2005) on the Assessment of the Impacts of the Authorities' Plans, Programmes and Policies on the Environment (SEA Act and Decree)
- Land Use and Building Act (132/1999) and Decree (895/1999)
 - Land use plans
- Act on the Arrangement of Water Management (1299/2004)
 - Water management plans

Objectives of the SEA legislation

- To promote the assessment of environmental impacts and their consideration in preparing and approving plans, programmes and policies of the authorities
- To improve the availability of information to the public and the opportunities for public participation
- To promote sustainable development

Environmental assessment flow chart

- Preparing a plan or programme and an environmental report and providing information on them (SEA Act 8 §)
- Consultation concerning the draft plan or programme and the environmental report (SEA Act 9 §, 10 §)
- Approval of the plan or programme and providing information on the decision (SEA Act 11 §)
- Monitoring (SEA Act 12 §)



Main stakeholders in an environmental assessment

- Responsible authority for a plan or programme
- Regional environment centre
- Environmental and health authorities in the municipalities
- The public
- Ministry of Social Affairs and Health, Ministry of the Environment
- Authorities and the public of the other state

Transboundary environmental impacts ...

- SEA Act 10 §: Ministry of the Environment sees to information provision and consultations related to the environmental assessment, the authority responsible for the plan or programme submits the information.
- SEA Decree 7§: information provision to other countries: draft plan or program, environmental report, information on possible impacts and decision-making procedures
- SEA Act 11§: results of consultations held between other states have to be taken into account in preparing the plan or programme

... Transboundary environmental impacts ...

- Land Use Act 199 §: Ministry of the Environment is responsible for notification to the other state and negotiations, the regional council preparing the plan (regional plan) or municipality (local master plan or local detailed plan) provides the information
- Land Use Decree 99 §: notification: regional council/municipality (i.e. participation and assessment scheme) → Regional environment centre (participation and assessment scheme, opinion of the centre) → Ministry of the Environment → Ministry of the Foreign Affairs (for information)
 - the other state participates in planning procedures, surveys and data
 - Letter of Ministry of the Environment 5th July 2004 on procedures in practice

... Transboundary environmental impacts

- Act on the Arrangement of Water Management 3 §: international water management areas: Tornionjoki international water management area, Teno–Näätämöjoki–Paatsjoki water management area
- Act on the Arrangement of Water Management 11 §: content of a water management plan, environmental report
- Act on the Arrangement of Water Management 17 §: Council of State approves water management plans, information provision on the decision in the international water management area

Cooperation in border areas

- Ministry of the Environment sees to information provision and negotiations connected to environmental assessment
 - Notification to the other state
 - Opinions, negotiations
 - Participation and interaction on local level

Content of notification

- Draft plan or programme, environmental report and information on transboundary environmental impacts
- Information on decision-making procedure and reasonable time frame to express opinions

Taking into account

- Opinions and statements are taken into account in preparation of the plan or programme
- It should be grounded how opinions and statements of the other state have been taken into account and how these have affected the content of the plan or programme and the choice between alternatives
- The decision on the plan or programme is to be informed to the other state

Plans and programmes requiring the assessment

- Regional plans, local master plans, local detailed plans
- Water management plans
- Regional waste management plans
- Nature conservation programmes
- Regional development plans

From Act to practical applications

- Experiences from transboundary project EIA
- In practise applied with Sweden, Norway, Estonia
- The Finnish Ministry of the Environment's Notification to the Norwegian Ministry of the Environment 11th January 2006 of transboundary environmental impacts concerning Utsjoki municipality's Tenojoki local master plan 2nd and 3rd phases
- Other land use plans, regional waste management plans in 2007: will be based on the national waste management plans and the regional pilot plans

EIA In The North Calotte – A Permit Authority's Perspective

*Doctor of Laws, Director Matti Hepola
Northern Finland Environmental Permit Authority*

1. A general perspective on EIA

The first thing one has to do in looking at EIA from the standpoint of a permit authority is to situate the EIA procedure within the system of legal and administrative guidance in Finland. The core issue is the management of environmental impacts and the relationship of environmental decision-making to that aim. Assessing environmental impacts is a form of guidance – guidance through information and through opportunities to participate. In Finland, the EIA and environmental permitting procedures are differentiated. The EIA is broader in scope with regard to social and economic impacts than the permitting procedure is. In the case of an environmental permit, the jurisdiction of the granting authority limits the matters that the authority's decision applies to and what the authority has to take into account in making its decision.

When considering the EIA procedure and the decision-making involved in an environmental permit, we have to determine the relationship of the two procedures to the project seeking the permit authority's approval. Here, we may distinguish two aspects of the EIA procedure: on the one hand, we can regard it as a process to be carried out; on the other, we can look at it in terms of its substance. This distinction has its origins in the history of the legislation: the EIA Directive was implemented in Finland at a time when decisions on environmental permits were made on a sectoral basis. That approach involved the selection of an independent EIA procedure, whose relation to the permit procedure and the permit decision had to be established, and required that a way be found to deal with the "overlap" in environmental assessment reports. This situation is inevitable because both the EIA and the permitting procedures are required to present the potential impacts of a project on the environment.

The EIA procedure has some special features in legal terms. Unlike a typical administrative procedure, it does not involve a permit application. Another noteworthy feature is that it does not culminate in an administrative decision.

The completion of the EIA procedure has bearing on the processing of environmental permit applications. In general terms, this means that it is not possible to get an environmental or water permit before the EIA procedure has been carried out. What happens in practice is that the permitting process is put "on hold" until the permit authority has received the EIA documents. This, in essence, is the importance of the EIA procedure as a process. The EIA Procedure Act, the Water Act and the Environmental Protection Act all contain provisions on this matter.

Where the substance of the EIA procedure is concerned, the focal question is how the procedure is taken into account when deciding on environmental and water management permits. In Finland, there are no phases of the EIA procedure that aim at granting a permit for the activity concerned, nor does the procedure involve any assessment of the allowability of the project. These are issues that are determined as part of the environmental permitting process. The statement of the contact authority is not legally binding on the permit authority, although in practice carries considerable weight. Here, in formal terms, the jurisdictions of the respective authorities conducting the EIA and permitting procedures are scrupulously distinguished. The requirements to be met before an environmental permit can be granted are determined with reference to the provisions in the relevant legislation for the sector; this means mainly the Environmental Protection Act and the Water Act. A permit authority must specify in its decision how it has taken the impact assessment report into account in making the decision.

It is rather difficult to determine how acknowledgment of the EIA report in a permit decision occurs in practice. One good example is the environmental and water management permit decision regarding the Suhanko mine, located in the municipality of Ranua (Decision of the Northern Finland Environmental Permit Authority 7 December 2005). The case involved the construction of a new mine, for which the EIA had been conducted. The project was very extensive in scope. The permit authority explicitly mentioned the outcome of the EIA procedure in the descriptive section of the decision and in the grounds for it. The authority's statement on the extent to which it had taken the EIA report into consideration is a brief one: "The information produced by the EIA process has been taken into account, along with other particulars of the application, in determining the permit conditions pertaining to allowable emission levels and to environmental protection structures."

In formal terms, the EIA procedure plays a modest role in the permit decision. Yet its impact in substantive terms is quite different. In the Suhanko case, the application documents were drawn up on the basis of the EIA studies and then updated and supplemented as necessary. In other words, the EIA procedure played an important part indeed in the permit phase: the impact assessment reports were incorporated into the permit application, and no new studies of note were carried out for the project. What a permit authority does in practice is to first look at the statement issued by the contact authority to see whether that authority has identified any points where supplementary information is required. Next, as part of its initial review of the permit application, the authority tries to determine whether the supplementary studies have been carried out. Another key factor is whether the activity that is the subject-matter of the permit application is the same as that dealt with in the EIA procedure. Here, a comprehensive assessment must be made of whether, within reason, the activities are similar. Practice has shown that the activity for which a permit is sought has a tendency to change somewhat in the course of the decision-making process.

In sum, one could say that in a certain sense the environmental permitting process seems to be an extension of the EIA procedure. A conservative estimate would be that 70 to 80 per cent of the assessment reports produced are the same.

2. Permit authorities and the EIA procedure in frontier zones

In Finland, the permits described in the Environmental Protection Act are dealt with by the permit authorities, regional environment centres and municipal environmental protection authorities. The water management permits described in the Water Act, as well as projects requiring an environmental and a water permit, are handled by the environmental permit authorities.

In the frontier zone, the principal exception to these procedures is found in the case of the Torne River watercourse, which is overseen by the Finnish-Swedish Frontier Rivers Commission. The Commission decides on permit matters involving pollution of or construction projects in the waters within its jurisdiction. An environmental permit authority then decides on "the rest" of the permit, that is, matters such as air protection and waste management. Where water management permits are concerned, the Commission's jurisdiction includes, among other things, construction projects on waterways. This rather complex system – currently being reformed – derives from the Commission's status as a supranational permit authority. When the Frontier Rivers Agreement is amended, the Commission will no longer be a permit authority. The situation in the Norwegian-Russian frontier zone is different, as there it is national authorities that have the jurisdiction in permit matters.

The Finnish-Swedish Frontier Rivers Agreement was concluded at the beginning of the 1970s – a time when environmental impact assessment as we understand it today was unknown. According to Chapter 8, Article 2 of the Agreement, a permit application must include the reports that are necessary for evaluating the quality, extent and impact of the undertaking involved. This means that the application must contain assessments of the project's environmental impacts.

Chapter 1, Article 8 of the Frontier Rivers Agreement is the crucial provision where EIA is concerned. It spells out the role of secondary legislation. Where the Agreement does not have special provisions, each state is to apply its respective law. Thus, the fact that the Agreement lacks provisions setting out an EIA procedure does not mean that no assessment will be conducted. In practice, an EIA has been carried out in the area covered by the Agreement whenever national legislation or international treaties have so required.

EIA in the Torne River watercourse has worked reasonably well in practice. This accomplishment would not have been possible without cooperation among the Finnish and Swedish Ministries of the Environment, the supervisory authorities and the Frontier Rivers Commission. The largest projects in the region for which environmental impact assessments have been carried out in recent years are the extension of the Tornio steel mill and the planned deepening of the shipping channel in Röyttä harbour.

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